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By: Steven J. Fram, Esquire
John C. Connell, Esquire

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

_____)	
PATRICK BRADY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 02-2917 (JEI)
)	
AIR LINE PILOTS ASSOCIATION,)	
INTERNATIONAL,)	
)	
Defendant.)	
_____)	

**DECLARATION OF STEVEN J. FRAM IN FURTHER SUPPORT OF
DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW
PURSUANT TO FED. R. CIV. P. 50(b) AND COMPANION MOTION FOR NEW TRIAL
PURSUANT TO FED. R. CIV. P. 59 OR FOR DISMISSAL**

STEVEN J. FRAM hereby declares as follows:

1. I am a member of the Bar of this Court and am a shareholder in the law firm of Archer & Greiner, P.C., attorneys for Defendant, Air Line Pilots Association, International.
2. I am submitting this Declaration in order to provide copies of certain deposition and trial transcripts and other materials that are referred to in the reply briefs being filed by Defendant on September 26, 2011, in further support of the Defendant's Motion for Judgment as

a Matter of Law Pursuant to Fed. R. Civ. P. 50(b) and Companion Motion for New Trial Pursuant to Fed. R. Civ. P. 59 or for Dismissal.

3. True and correct copies of excerpts of deposition and trial transcripts, trial exhibits and other materials are attached as follows to this Declaration:

<u>Exhibit</u>	<u>Description</u>
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<u>Deposition Transcripts</u>	
--------------------------------------	--

A	Deposition of Mark Hunnibell, October 24, 2006
B	Deposition of John Clark, December 1, 2006

<u>Trial Transcripts</u>	
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C	Trial Transcript, Volume 3, of June 9, 2011
D	Trial Transcript, Volume 4, of June 13, 2011
E	Trial Transcript, Volume 7, of June 16, 2011
F	Trial Transcript, Volume 9, of June 22, 2011
G	Trial Transcript, Volume 10, of June 23, 2011
H	Trial Transcript, Volume 11, of June 27, 2011
I	Trial Transcript, Volume 12, of June 28, 2011
J	Trial Transcript, Volume 13, of June 29, 2011
K	Trial Transcript, Volume 14, of June 30, 2011
L	Trial Transcript, Volume 15, of July 5, 2011
M	Trial Transcript, Volume 16, of July 6, 2011
N	Trial Transcript, Volume 17, of July 7, 2011
O	Trial Transcript, Volume 18, of July 11, 2011

Trial Exhibits

P P-3, Letter dated December 18, 2001, from Hunnibell to Rindfleisch

Q P-236, Email dated May 24, 2001, from Holtzman to Christy, Roberts, Rosen and Wilder forwarding May 23, 2001 APA Hotline Message

R P-343, Letter dated October 23, 2001, from Pastore to Darrah and Brundage

S P-344, Letter dated October 23, 2001, from Darrah to Pastore

T P-345, Letter dated October 24, 2001, from Brundage to Pastore

U D-2, ALPA Board of Directors Pilot Unity Resolution

V D-25, Council 3 Information Update dated May 8, 2001

W D-88, Minutes of TWA-MEC Special Meeting on October 20-23, 2001

X D-138, Letter dated October 25, 2001, from Rautenberg to Council 3 pilots

Y D-365, Minutes of Council 4 Meeting on March 30, 2001

Z D-411, ALPA Jumpseat Policy

Other Materials

AA Joint Proposed Final Jury Instructions

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 26, 2011.

/s/ Steven J. Fram
STEVEN J. FRAM, ESQUIRE

Exhibit A

Bensel v. Air Line Pilots

10/24/2006

Mark Hunnibell

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

Cause No. 02-2917-JEI-AMD

-----X

LEROY "BUD" BENSEL, et al.,

Plaintiffs,

Vs.

AIRLINE PILOTS ASSOCIATION,

Defendant.

-----X

D E P O S I T I O N

The deposition of CAPTAIN MARK HUNNIBELL,
taken on behalf of the Plaintiffs in the
hereinbefore entitled action, before Francine
Garb, a Certified Shorthand Reporter and Notary
Public within and for the State of Connecticut,
commencing at 10:00 a.m., on October 24, 2006,
at the offices of Brandon Smith Reporting,
Six Landmark Square, Stamford, Connecticut 06901.

Brandon Smith Reporting

Bensel v. Air Line Pilots

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Mark Hunnibell

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1 MARK HUNNIBELL
 2 about this deposition?
 3 A No.
 4 Q Earlier in the deposition you mentioned
 5 that you had met with Mr. Rindfleisch?
 6 A Yes.
 7 Q And he's one of the organizers at ALPA,
 8 right?
 9 A I believe so.
 10 Q When was the first time you met with him
 11 in connection with trying to organize the American
 12 Airline pilots to join ALPA?
 13 A That is a question I felt confident that
 14 you would ask, and I can't say for sure. I think
 15 it's possible we may have met sometime late in
 16 2001 or 2002. I don't know.
 17 Q It's possible, certainly sitting here
 18 today, your best memory, you are saying it's
 19 possible you met him in the year 2001 in
 20 connection with trying to organize the American
 21 Airline pilots to join ALPA?
 22 A I would say it's possible. I would be
 23 more confident in saying it's the year 2002.
 24 Q And that would be the winter of 2002?
 25 A I think if I met with him, it was

1 MARK HUNNIBELL
 2 labor lawyers, explain what you mean by these
 3 cards. What's the purpose of the cards?
 4 A The cards were cards that I sent out in
 5 conjunction with my campaign for Vice President,
 6 actually, and they are cards that say -- we sent
 7 them to every APA member, or that was the idea
 8 anyway. And the intent was that pilots would sign
 9 and return these cards, and we would get enough of
 10 them, which in this case, my understanding is we
 11 would need 51 percent, because the pilots were
 12 already represented. And once we got enough of
 13 them, that we would request an election.
 14 What the cards themselves said was I
 15 want to have a representation election on the
 16 property at American, and I want ALPA to be my
 17 representative, something like that. And then the
 18 people would fill it out and mail it back.
 19 Q And they are, physically, like little
 20 postcards?
 21 A They are postcards, yes.
 22 Q When were they mailed out?
 23 A I think I mailed them at the end of my
 24 campaign. I think it was probably either the
 25 beginning of May or middle of May, 2001. It's

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1 MARK HUNNIBELL
 2 probably after we had run out of time on the
 3 cards.
 4 Q What does that mean?
 5 A Well, the card campaign that we were
 6 running timed out. There is -- they are only good
 7 for a year, and then you have got to go back and
 8 resolicit signatures, and we didn't do that. So,
 9 we let the cards expire, and then we transitioned
 10 to an effort to generate political support for a
 11 merge.
 12 Q You said a whole bunch there.
 13 A I'm sorry.
 14 Q Don't apologize to me.
 15 The 12-month limitation you are talking
 16 about, what you are saying is that once these
 17 campaign cards go out to the membership, you have
 18 12 months to --
 19 A Twelve months from the date the
 20 individual signed, it times out. That is my
 21 understanding. My understanding is that the
 22 National Mediation Board will not accept as valid
 23 a card that was executed more than 12 months
 24 earlier.
 25 Q For those of us in the room that aren't

1 MARK HUNNIBELL
 2 possible that it was in June, but I don't think it
 3 was. I'm trying to remember the time line on that
 4 election, and I don't think I went to run off in
 5 that election, which would have meant it was
 6 probably a May campaign.
 7 Q You said these cards, once signed, they
 8 are good for 12 months, right? That is your
 9 understanding?
 10 A Yes.
 11 Q During what period were you receiving
 12 signed cards back from American pilots?
 13 A Well, I never received them.
 14 Q Where did they go?
 15 A They went to the post office in
 16 California.
 17 Q That would be John Clark's post office?
 18 A John got them, yes.
 19 Q How long was he receiving signed cards;
 20 do you know?
 21 A I don't know. It was over the course of
 22 the year. They came and trickled -- you get an
 23 initial bunch, and then they kind of trickled out.
 24 Q I'm trying to understand. I'm asking
 25 these questions because you prefaced your

14 (Pages 50 to 53)

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Mark Hunnibell

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<p>1 MARK HUNNIBELL</p> <p>2 on the 23rd of July, right?</p> <p>3 A The bill that you have here was I guess</p> <p>4 arrival on the 22nd, check out on the 23rd.</p> <p>5 And you say there is a Cafe Grille</p> <p>6 thing? Where is that?</p> <p>7 Q It's --</p> <p>8 A On the thing, and 10:48 in the morning.</p> <p>9 Yeah, I think we had breakfast.</p> <p>10 Q You mentioned a dinner. That would have</p> <p>11 been on the evening --</p> <p>12 A I would say the 22nd, the night before.</p> <p>13 Q Who paid for the dinner?</p> <p>14 A I don't remember. I really don't.</p> <p>15 Q You didn't pay for it, though?</p> <p>16 A I don't remember. I don't know. I may</p> <p>17 have, I don't know. We may have split the check,</p> <p>18 I don't remember.</p> <p>19 Q The people that were at the dinner were</p> <p>20 the same group that was at the hotel the next day?</p> <p>21 A No. No. I think the only person that I</p> <p>22 have any recollection of having dinner with like</p> <p>23 that is Ron Rindfleisch. It was just him and John</p> <p>24 and I.</p> <p>25 Q And you have a firm memory, sitting here</p>	<p>1 MARK HUNNIBELL</p> <p>2 Q Jerry Mugerditchian, was he at the</p> <p>3 July 2001 meeting?</p> <p>4 A He may have been. It's possible.</p> <p>5 Q So it's possible it could have been</p> <p>6 Rindfleisch, it's possible it could have been</p> <p>7 Mugerditchian. Is it possible it could have been</p> <p>8 anybody else that you know of?</p> <p>9 A The dinner thing?</p> <p>10 Q I'm talking about the hotel.</p> <p>11 A Like I said, I'm fairly certain that</p> <p>12 Howard Attarian was there.</p> <p>13 Q You did mention him.</p> <p>14 A And beyond that, I don't know.</p> <p>15 Q And you told me that Mr. Woerth, Duane</p> <p>16 Woerth, the President of ALPA, was supposed to be</p> <p>17 at the meeting, but he didn't make it?</p> <p>18 A Something like that. I don't know</p> <p>19 whether he was supposed to be, but there was</p> <p>20 something of the expectation that we would be</p> <p>21 seeing him or something like that. There was some</p> <p>22 ambiguity as to whether he would be coming.</p> <p>23 Q At this point, July of '01, you had</p> <p>24 already made your mailing to the APA membership,</p> <p>25 right?</p>
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<p>1 MARK HUNNIBELL</p> <p>2 today, that you had a dinner -- you had dinner</p> <p>3 with Mr. Rindfleisch on July 22nd of 2001?</p> <p>4 A Not firm, no. That's wrong. It's not.</p> <p>5 Obviously, I don't have a firm reading of the</p> <p>6 dates, so I sure don't have a firm reading of when</p> <p>7 it was.</p> <p>8 Q But you do know for a fact that the</p> <p>9 reason you were in Washington in July 2001 was to</p> <p>10 meet with some ALPA folks, and there was talk</p> <p>11 about organizing the American pilots to join ALPA;</p> <p>12 is that right?</p> <p>13 A That was the genesis of it.</p> <p>14 Q Let me throw some names out at you and</p> <p>15 see if it will draw some memory as to who might</p> <p>16 have been at the meeting.</p> <p>17 A Okay.</p> <p>18 Q Do you remember Jalmer Johnson?</p> <p>19 A No, he was not there.</p> <p>20 Q He wasn't at the July 2001 meeting?</p> <p>21 A I shouldn't say that. I don't recall</p> <p>22 him being there.</p> <p>23 Q You know that gentleman?</p> <p>24 A I met him one time that I do recall. I</p> <p>25 don't recall meeting him prior to that.</p>	<p>1 MARK HUNNIBELL</p> <p>2 A Yes.</p> <p>3 Q What was the point of this meeting; to</p> <p>4 report the status of how many cards you are</p> <p>5 receiving, is that it?</p> <p>6 A Well, one of the things is that we</p> <p>7 really -- the campaign itself, we happened to pick</p> <p>8 an unfortunate name for it in the context of</p> <p>9 what's being transpired here. We really were not</p> <p>10 doing anything at the direction or behest of ALPA.</p> <p>11 So reporting the progress to them implies that</p> <p>12 there is some kind of superior/subordinate</p> <p>13 relationship that didn't exist.</p> <p>14 We were informing them of how things</p> <p>15 were going, and what we were facing and things</p> <p>16 like that. I suppose that that is accurate. But</p> <p>17 to the extent that you imply there is some kind of</p> <p>18 reporting, that is not accurate.</p> <p>19 Q Well, do you, in fact, remember the ALPA</p> <p>20 people asking you about the status of the campaign</p> <p>21 in the July 2001 time frame there?</p> <p>22 A They may have asked how it was going,</p> <p>23 something like that.</p> <p>24 Q What else did they ask you?</p> <p>25 A Well, I will tell you that I do</p>

19 (Pages 70 to 73)

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Mark Hunnibell

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1 MARK HUNNIBELL
 2 remember -- backing up just a little bit, I
 3 remember that when I called Mr. Rindfleisch in
 4 May, right after I had mailed my campaign mailer
 5 with the cards, and -- because I hadn't discussed
 6 this with him at all before I did it, and he -- it
 7 was like an extended period of silence on the
 8 phone, like you could have heard a pin drop. Like
 9 he knew -- he said, what do the cards say, and he
 10 asked me about the card, and what it looked like,
 11 and what it said. And I told him, and he said,
 12 "Well, how did you mail that out?" I said, "I
 13 just used it in my campaign mailing for candidate
 14 for office." And he sounded really bummed out
 15 about it, that I had done this.

16 And so I was a little bit, I don't know,
 17 taken aback. I was kind of upset with myself a
 18 little bit, but also could tell they were a little
 19 bit startled by it. But that was in May, and then
 20 by July they said, okay, it's water over the dam,
 21 how is it going kind of thing.

22 Q They warmed up to the idea, it sounds
 23 like?

24 A I wouldn't say they warmed up. Cat
 25 being out of the bag to the extent it was, they

1 MARK HUNNIBELL
 2 A None.
 3 Q We were talking about a meeting in
 4 Vegas, and I asked that question. If you flip to
 5 the very next page of this Exhibit 3 --

6 A 24611?

7 Q Yes, exactly.

8 -- there is a cab receipt dated
 9 December 5, '01, right?

10 A Okay.

11 Q That is correct, right?

12 A The cab receipt, yes.

13 Q This is in Mr. Clark's handwriting,
 14 correct?

15 A Yes. I don't know. I don't know his
 16 handwriting.

17 Q There is an invoice for a cab fare in
 18 Las Vegas on or about December 5, '01. Were you
 19 in Vegas that day?

20 A No.

21 Q Do you know why Mr.-- assume for me this
 22 is Mr. Clark's handwriting.

23 A Assuming that it is.

24 Q Assuming that is the case, do you know
 25 why he was there that day?

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1 MARK HUNNIBELL
 2 said, okay, what is the impact, where are we now,
 3 what's going on, how is it going, that kind of
 4 thing.

5 Q Other than making inquiries of you as to
 6 the status of things, what else was discussed
 7 about your campaign that you can recall? I'm
 8 limiting my question to this meeting here in July
 9 '01.

10 A I think they may have wanted to know how
 11 broadly supported we were, what the network was
 12 like, things like that. You know, what kind of --
 13 what kind of group, for lack of a better word,
 14 that we represented. They were probably perhaps
 15 testing us to find out whether this was just a
 16 couple of knuckleheads, or whether we actually had
 17 broad base of support, or things like that.

18 Q Well --

19 A Like I said earlier, my sense of the
 20 meeting was that they were kind of trying to find
 21 out what we were about and who we were.

22 Q What sort of assistance did they offer
 23 you at that meeting?

24 A None. None.

25 Q What assistance did they provide you?

1 MARK HUNNIBELL
 2 A No.
 3 Q He never told you about a meeting with
 4 ALPA people at the Paris Hotel in December '01?

5 A Well, I don't know that he did, no.

6 Q So as of July '01, you have now had one
 7 meeting with ALPA folks; is that your testimony?

8 A Yes.

9 Q That you can recall, or is that a fact,
 10 just one meeting --

11 A Since --

12 Q -- as of July?

13 A As of July '01, yes, I would say that.
 14 Certainly nothing before then.

15 Q When was your next meeting with ALPA
 16 people relative to your campaign effort?

17 A I think we met with them in May or
 18 perhaps June 2003.

19 Q You didn't meet with them again in the
 20 year 2001?

21 A I don't -- I shouldn't say that. Well,
 22 in 2001, I don't think I did. I don't recall
 23 doing it. And that may be -- maybe there was a
 24 meeting, and it's completely escaped my mind. But
 25 I think that we met that one time in 2001.

20 (Pages 74 to 77)

Brandon Smith Reporting

Bensel v. Air Line Pilots

10/24/2006

Mark Hunnibell

<p style="text-align: right;">Page 226</p> <p style="text-align: center;">SIGNATURE SHEET</p> <p>I, MARK HUNNIBELL, have read the foregoing transcript of the testimony taken at the deposition on the 24th day of October, 2006, and it is true and accurate to the best of my knowledge.</p> <p style="text-align: center;"><u>MARK HUNNIBELL</u></p> <p>Subscribed and sworn to before me this day of , 2006.</p> <p>_____ Notary Public</p>	<p style="text-align: right;">Page 228</p> <p>OCTOBER 24, 2006</p> <p style="text-align: center;">I N D E X</p> <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;">WITNESS</th> <th style="text-align: left;">EXAMINATION BY</th> <th style="text-align: left;">PAGE</th> </tr> </thead> <tbody> <tr> <td>MARK HUNNIBELL</td> <td>Mr. Press</td> <td>5</td> </tr> <tr> <td></td> <td>Mr. Katz</td> <td>199</td> </tr> <tr> <td></td> <td>Mr. Press</td> <td>214</td> </tr> <tr> <td></td> <td>Mr. Katz</td> <td>223</td> </tr> </tbody> </table> <p style="text-align: center;">E X H I B I T S</p> <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;">FOR IDENTIFICATION</th> <th style="text-align: left;">PAGE</th> </tr> </thead> <tbody> <tr> <td>Plaintiffs' 1 Group of invoices</td> <td>34</td> </tr> <tr> <td>Plaintiffs' 2 Letter</td> <td>49</td> </tr> <tr> <td>Plaintiffs' 3 Group of documents</td> <td>63</td> </tr> <tr> <td>Plaintiffs' 4 Document bearing Bates No. ALPA 82 018562</td> <td></td> </tr> <tr> <td>Plaintiffs' 5 10/14/01 e-mail</td> <td>103</td> </tr> <tr> <td>Plaintiffs' 6 Document dated 4/3/02</td> <td>128</td> </tr> <tr> <td>Plaintiffs' 7 2/11/02 receipt</td> <td>134</td> </tr> <tr> <td>Plaintiffs' 8 Document bearing Bates Nos. ALPA 24561 through 587</td> <td>142</td> </tr> <tr> <td>Plaintiffs' 9 Document headed "Presentation by Captain Duane Woerth for President"</td> <td>154</td> </tr> <tr> <td>Plaintiffs' 10 String of e-mails</td> <td>159</td> </tr> <tr> <td>Plaintiffs' 11 Document headed "ALPA Exploratory Committee Report to the APA Board of Directors Winter 2001 Board Meeting"</td> <td>166</td> </tr> </tbody> </table>	WITNESS	EXAMINATION BY	PAGE	MARK HUNNIBELL	Mr. Press	5		Mr. Katz	199		Mr. Press	214		Mr. Katz	223	FOR IDENTIFICATION	PAGE	Plaintiffs' 1 Group of invoices	34	Plaintiffs' 2 Letter	49	Plaintiffs' 3 Group of documents	63	Plaintiffs' 4 Document bearing Bates No. ALPA 82 018562		Plaintiffs' 5 10/14/01 e-mail	103	Plaintiffs' 6 Document dated 4/3/02	128	Plaintiffs' 7 2/11/02 receipt	134	Plaintiffs' 8 Document bearing Bates Nos. ALPA 24561 through 587	142	Plaintiffs' 9 Document headed "Presentation by Captain Duane Woerth for President"	154	Plaintiffs' 10 String of e-mails	159	Plaintiffs' 11 Document headed "ALPA Exploratory Committee Report to the APA Board of Directors Winter 2001 Board Meeting"	166
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<p style="text-align: right;">Page 227</p> <p>STATE OF CONNECTICUT: COUNTY OF FAIRFIELD:</p> <p>I, Francine Garb, a Notary Public within and for the State of Connecticut, do hereby certify that the deposition of MARK HUNNIBELL was held before me on the 24th day of October, 2006, at the offices of Brandon Smith Reporting, Six Landmark Square, Stamford, Connecticut 06901.</p> <p>I further certify that the witness was first sworn by me to tell the truth, the whole truth and nothing but the truth, and was examined by counsel, and his testimony stenographically reported by me and subsequently transcribed as hereinbefore appears.</p> <p>I further certify that I am not related to the parties hereto or their counsel, and that I am not in any way interested in the event of said cause.</p> <p>Dated at Stamford, Connecticut this 2nd day of November, 2006.</p> <p style="text-align: center;">ss/Francine Garb</p>	<p style="text-align: right;">Page 229</p> <p style="text-align: center;">E X H I B I T S (Continued)</p> <table style="width: 100%;"> <tbody> <tr> <td>Plaintiffs' 12 Document dated 1/31/01</td> <td>174</td> </tr> <tr> <td>Plaintiffs' 13 Document dated 4/5/01</td> <td>180</td> </tr> <tr> <td>Plaintiffs' 14 4/14/01 memorandum</td> <td>187</td> </tr> <tr> <td>Plaintiffs' 15 Document dated 6/1/01</td> <td>190</td> </tr> <tr> <td>Plaintiffs' 16 Excerpt from ALPA's website</td> <td>217</td> </tr> </tbody> </table> <p style="text-align: center;">* * *</p>	Plaintiffs' 12 Document dated 1/31/01	174	Plaintiffs' 13 Document dated 4/5/01	180	Plaintiffs' 14 4/14/01 memorandum	187	Plaintiffs' 15 Document dated 6/1/01	190	Plaintiffs' 16 Excerpt from ALPA's website	217																													
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Brandon Smith Reporting

Exhibit B

Major John B. Clark, JR. - December 1, 2006
Leroy "Bud" BenseL, et al. vs. Air Line Pilots Association

Page 1

Cause No. 02-2917-JEI-AMD

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

-ooo-

LEROY "BUD" BENSEL, et al.,
Plaintiffs,

vs.

AIR LINE PILOTS ASSOCIATION,
Defendants.

=====

VIDEOTAPED DEPOSITION OF
MAJ. JOHN B. CLARK, JR.

FRIDAY, DECEMBER 1, 2006

INCLINE VILLAGE, NEVADA

Reported by: KIMBERLY J. WALDIE, NV CCR #720, RPR
CALIFORNIA CSR #8696

Major John B. Clark, JR. - December 1, 2006
 Leroy "Bud" Bensel, et al. vs. Air Line Pilots Association

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<p>1 Airlines. And if 50 percent plus one returned them, and 2 then they're submitted to the National Mediation Board 3 within a year's time frame of the first one being 4 signed, that triggers a representation election. 5 Q Okay. 6 A The members of the class at that point in time 7 then get to choose who they want to represent them. It 8 doesn't necessarily mean that they choose ALPA. They 9 could choose ALPA. They could choose the Teamsters. 10 They could choose APA. It just triggers a 11 representation election. 12 Q Election. Very good. And that was your goal 13 in initiating this card campaign -- 14 A Yes. 15 Q -- is to have an election? 16 A That's correct. And we could have called it 17 the Ducks Unlimited Authorization -- 18 Q Right. 19 A -- Campaign. But we chose to call it the ALPA 20 representation campaign because that's where Mark and I 21 wanted to go. 22 Q Now, the cards that are used for a card 23 campaign, how did you get those cards? 24 A We made them up. 25 Q And you -- from scratch?</p>	<p>1 Q Who told you to go look at that manual? 2 A I don't recall that anyone did. 3 Q That was something that you learned on your 4 own? 5 A Yes. 6 Q Okay. 7 A Mark and I learned that on our own. 8 Q And then the cards themselves, I understand, 9 they're like the size of a postcard? 10 A Uh-huh. 11 Q Who was involved in -- well, let me ask -- did 12 anybody give you an exemplar of -- of a card like that 13 for you to work with? 14 A No. I told you we designed it all on our own. 15 Q From scratch? 16 A Yes. 17 Q Was there anybody at ALPA that helped you 18 research or format your -- your representation cards? 19 A No. 20 Q Nobody? 21 A No. 22 Q Besides Mr. Hunnibell, who helped you? 23 A Helped us with what? 24 Q With the researching and the creation of the 25 card.</p>
Page 71	Page 73
<p>1 A Yes. 2 Q There's no -- 3 A We designed them and made them up. 4 Q There's no union form book you can go to and 5 here's a representation card or -- 6 A Yeah. 7 Q Oh, there is? 8 A Yeah. We did the research ourselves. We 9 formulated the format in which the card was going to be. 10 I got the post office box. I did the Business Reply 11 Mail paperwork with the Redondo Beach Post Office, and 12 we ran it all by ourselves. You bet. 13 Q Okay. First you mentioned that you -- you 14 researched what you had to do. I mean going into this, 15 had you ever, I guess, organized a card campaign for -- 16 A No. 17 Q -- union elections? 18 A No. 19 Q This is the first time you ever did it? 20 A That's it. 21 Q All right. What sources did you refer to to, 22 you know, figure out what you had to do? 23 A I believe we looked at what's called the NMB 24 Representation Manual at a minimum. I can't remember if 25 we looked at anything else.</p>	<p>1 A No one that I recall. 2 Q Did you -- well, I was going to ask you if you 3 consulted a lawyer, but that would call for privileged 4 information. I won't ask. 5 Now, do you remember when the cards were mailed 6 about? 7 A Yeah. Roughly May of '01. 8 Q Okay. 9 A May -- late May, early June. 10 Q So you got basically mid-February at this -- 11 this board meeting your resolution to continue the 12 Exploratory Committee. That failed. And then from that 13 time period through early May, you are in this 14 research-and-design, if you will, mode. Is that -- 15 would that be accurate? 16 A No. That didn't start until probably early 17 May. 18 Q Oh, after you retired from the board? 19 A Well, Mark was off the board. Mark's term 20 was -- preceded mine by -- by six months. So he -- he 21 left the board in November of 2000. And to the extent 22 that I recall, he -- he was doing a lot of this work, 23 because in the winter of 2001 into the spring of 2001, 24 there was about a two-month period where I really wasn't 25 doing much of any APA work at all because I was going</p>

19 (Pages 70 to 73)

Major John B. Clark, JR. - December 1, 2006
Leroy "Bud" Bensel, et al. vs. Air Line Pilots Association

Page 94	Page 96
<p>1 document, it's got -- it says ALPA, and there's a 2 number. Do you see that? 3 A Uh-huh. 4 Q And that would signify that Mr. Katz's law firm 5 produced this. All right? 6 A Okay. 7 Q And this is the way the document came to me. 8 A Okay. 9 Q Did you forward this e-mail on to somebody at 10 ALPA? Did you do that? 11 A I can't tell you that. I have no idea. 12 Q Right. Okay. 13 A I mean it -- since, you know, it looks to me 14 like whoever forwarded that information was redacted 15 from the top of this, I don't know. 16 Q Fair enough. 17 A My guess is if Dennis Petretti was running for 18 president, that this was sent to as many pilots at 19 American Airlines as possible. Probably above 20 90 percent of them. So I could have been a recipient of 21 this, but I don't know that I was, and I couldn't tell 22 you if I forwarded it. 23 Q Fair enough. Now, if you look at the first 24 paragraph of his e-mail -- 25 A Okay.</p>	<p>1 exists that there may have been. 2 Q But sitting here today you are not aware of 3 any? 4 A No. 5 Q All right. 6 A Nor was I back then. 7 Q Now, you recall that there were two mailings 8 that you and/or Mr. Hunnibell were involved in of 9 campaign cards. Right? 10 A Uh-huh. 11 Q All right. And the first one was -- well, the 12 first one, did it go to all the pilots, all the American 13 Airline pilots? 14 A It went to whatever distribution list Prima 15 Data had. 16 Q Prima Data, what -- what's that? 17 A That's the firm that APA uses to send campaign 18 mailers to. They provide the addresses of the pilots. 19 Q That was your intention, to -- 20 A APA provides the list -- the distribution list 21 to Prima Data, and Prima Data sends it to that list. 22 You, as the candidate, don't get to see the list. 23 Q Can anybody call Prima Data and get a copy of 24 that list? 25 A Absolutely not.</p>
Page 95	Page 97
<p>1 Q -- Captain Petretti says, (Reading): I would 2 like to preface my comments with the understanding that 3 what I have -- should be "to say" -- what I have to say 4 has to do with the recent and ongoing activity by APA 5 leadership in rejoining ALPA. 6 And my question is, as far as you know, what 7 activity was ongoing by APA leadership to rejoin ALPA in 8 April of 2001? 9 A The ALPA Exploratory Committee was probably 10 showing up in their mailboxes as he was sending this. 11 That's it. 12 Q That -- that was the only thing that the 13 leadership was undertaking at that point? 14 A That's it. 15 Q All right. Other than you and Captain 16 Hunnibell's effort, your grass roots campaign, if you 17 will, was there anybody else at the APA that was working 18 to organize the American pilots to join ALPA? 19 A There may have been. 20 Q And I know that you got some support along the 21 way. But was there another, you know, significant 22 effort underway that you know of? 23 A There may have been. 24 Q Can you tell me anything about it? 25 A No. I'm saying there is -- the possibility</p>	<p>1 Q That's proprietary to the union. Right? 2 A Of course. 3 Q Okay. And then there was a second mailing 4 then. Was it your intention to mail to the same group 5 of people at that time? 6 A Yes. 7 Q All right. Do you recall generally what the 8 time frame was between the two mailings? 9 A No. 10 Q Was it more than six months? 11 A No, because the election cycle is not that 12 long. 13 Q So it was less than six months? 14 A I would say it was probably four to six weeks 15 at the most. 16 Q Okay. 17 A If I recall that the cards were sent in late 18 May or June, and you are showing me this saying that it 19 was sent in mid-April, there's your four to six weeks. 20 Q So sitting here and looking at the record that 21 we have before us, you would -- you would draw the 22 inference or -- let me start over and ask a real 23 question. 24 From everything that you know and you've seen 25 today, you would believe that the first mailer went out</p>

25 (Pages 94 to 97)

Major John B. Clark, JR. - December 1, 2006
Leroy "Bud" Bensel, et al. vs. Air Line Pilots Association

Page 186	Page 188
<p>1 and sign the deposition and make any corrections. 2 THE WITNESS: I'll make corrections if 3 they're -- if those are -- any need to be made and then 4 I will sign the corrected copy. 5 MR. PRESS: Right on. That's it. 6 THE WITNESS: Okay. 7 THE VIDEOGRAPHER: This concludes the 8 deposition of John Clark on December 1st, 2006. The 9 time going off record is 5:57 p.m. 10 (The proceedings concluded at 5:57 P.M.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center; margin-top: 20px;">MAJ. JOHN B. CLARK, JR.</p>	<p>1 2 3 STATE OF _____ 4) ss. 5 COUNTY OF _____ 6 I, _____, a notary 7 public in and for the County of _____ 8 9 State of _____, do hereby certify: 10 11 That on the _____ day of _____, 12 2006 before me personally appeared MAJ. JOHN B. CLARK, 13 JR., whose deposition appears herein; 14 That any changes in form or substance desired 15 by the witness were entered upon the deposition by the 16 witness; 17 That the witness thereupon signed the 18 deposition under penalty of perjury. 19 20 Dated: At _____, 21 This _____ day of _____, 2006. 22 23 24 25</p>
<p style="text-align: right; padding: 5px;">Page 187</p> <p>1 I, KIMBERLY J. WALDIE, a Certified Shorthand 2 Reporter licensed in the State of California and the 3 State of Nevada, do hereby certify: 4 That on FRIDAY, DECEMBER 1, 2006, at the Hyatt 5 Regency Lake Tahoe, 111 Country Club Drive, Incline 6 Village, Nevada, personally appeared MAJ. JOHN B. CLARK, 7 JR., who was duly sworn to testify and deposed in the 8 matter entitled herein; 9 That said deposition was taken in verbatim 10 stenotype notes by me, a Certified Shorthand Reporter, 11 and thereafter transcribed into typewriting as herein 12 appears; 13 That the foregoing transcript, consisting of 14 pages 1 through 186, is a full, true and correct 15 transcription of my stenotype notes of said deposition 16 to the best of my knowledge, skill and ability. 17 I further certify that I am not a relative or 18 employee of counsel of any of the parties, nor 19 a relative or employee of any party involved in said 20 action, nor financially interested in the action. 21 At the conclusion of the proceedings the 22 witness requested the transcript be e-mailed to him. 23 Dated at Reno, Nevada, this 11th day of 24 December, 2006. 25</p> <p style="text-align: center; margin-top: 20px;">KIMBERLY J. WALDIE, CSR No. 8696 NV CCR #720, RPR</p>	<p style="text-align: right; padding: 5px;">Page 189</p> <p>1 2 OFFICER'S ACTIONS RE SIGNING OF DEPOSITION 3 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 4 5 DATE 6 12-11-06 AT DIRECTION OF COUNSEL THE WITNESS WAS 7 SENT AN E-MAIL OF THE TRANSCRIPT 8 9 10 11 12 WITNESS SIGNED DEPO 13 14 ORIGINAL SENT TO 15 16 OTHER ACTIONS 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>

48 (Pages 186 to 189)

Exhibit C

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 THEODORE A. CASE, SALLY YOUNG,
5 HOWARD HOLLANDER, PATRICK BRADY
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 3
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 9, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND

20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.

AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBERG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
8
9

10 LYNNE JOHNSON, CSR, CM, CRR
11 OFFICIAL COURT REPORTER
12 UNITED STATES DISTRICT COURT
13 P.O. BOX 6822
14 LAWRENCEVILLE, NJ 08648
15 PHONE: 609 896 1836
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Altman-direct

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1 for the process to continue. That was what the discussion
2 was about. He said I didn't see, he he didn't think the
3 Court would grant in this case.

4 Q. And again, that he was who?

5 A. Bill Wilder. Our merger attorney.

6 Q. Did Mr. Holtzman or Warner or Christy make any
7 statements to the effect that they agreed with Mr. Wilder's
8 opinion?

9 A. No. There was no agreement or disagreement at this
10 meeting. People were just listening.

11 Q. Now, at that point there hadn't been a 1113 motion
12 filed. That came later?

13 A. That came later.

14 Q. Why were you even talking about that?

15 A. It was one of the threats, I guess, coming, that if we
16 were told by TWA corporation that if you didn't do this, this
17 would be the next step that they would have to take and that
18 would be to file a 1113 motion.

19 Q. So you just planned it?

20 A. That is exactly what the meeting was for. What are the
21 options, what are we phased with. What could happen?

22 Q. Mr. Altman, as an ALPA member, a MEC member, were you
23 aware of any efforts before the American TWA transaction was
24 announced, so now we are in the year 2000, were you aware of
25 any efforts by ALPA to get the American pilots to rejoin

Altman-direct

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1 ALPA?

2 A. Yes, I was.

3 Q. Can you tell us what you understood at the time?

4 Q. Again, we are talking before the merger deal was
5 announced in January?

6 A. There were a number of airlines that had split off from
7 ALPA in the past. And for various reasons. And ALPA was
8 making a concentrated effort, rightfully so, I believe, to
9 bring it back into one union. The airlines in question were
10 Federal Express, Continental, and American. So I had known
11 that -- well, Federal Express and Continental had rejoined
12 ALPA, knew that. And we knew that, or I knew personally from
13 press reports and what I had read in ALPA magazine and other
14 publications that, you know, there is an effort, we would
15 like to get American back into the ALPA fold.

16 Q. Okay. Now, did that subject come come up at these
17 January, late January, meetings?

18 A. Yes, it did.

19 Q. Tell us how, the subject was raised?

20 A. The merger committee chairman for our side, Mr. Bud
21 Benschel, asked the question.

22 Q. Asked it of whom?

23 A. He asked it of the ALPA advisors, Mr. Holtzman, Mr.
24 Christy and Mr. Warner, and it was phrased, what are you
25 doing with American, and the American pilots.

Altman-direct

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1 A. Just what we were told, there is no need to waive scope.
2 You don't have to do it.

3 Q. On April 2 he flip-flopped and his opinion was what?

4 A. You have to do it, you have to do it now. There is no
5 time.

6 I did raise the question, because it was such a
7 huge decision, and normally we would send things out of a
8 magnitude like this to the pilot group, hey, this is what is
9 facing us, how do you vote. Yes or no. We would like to get
10 a pilot ratification. I was told specifically there is no
11 time.

12 Q. Wait. You asked for that to happen on April 2?

13 A. I would like to have this go out. That is a huge
14 decision to put on our shoulders. And we need to put this
15 out to, this is a total change in, you know, a
16 recommendations coming from advisors. So we should, in good
17 conscious, put this out to the pilot group and it had to be
18 done that day. And no one ever told us why.

19 Q. Other than waiving scope did they give you any
20 alternative strategy?

21 A. There were no alternatives offered.

22 Q. Did any of the MEC members suggest alternative
23 strategies?

24 A. Yes. The question was asked?

25 Q. What was that?

Altman-direct

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1 A. Alternative strategies was raised by Mr. Ted Case about
2 the ability, if they took the contract, of the right to
3 strike.

4 THE COURT: In other words, if there was no labor
5 contract at all, if the 1113 was granted, the issue raised
6 was --

7 A. Can you strike, without a labor contract.

8 Q. Before getting into what the response was, this right to
9 strike, a pilot that has an existing, that is working under a
10 collective bargaining agreement does not have the right to
11 strike. Is that correct?

12 A. Yes. That's correct. Certain circumstances through the
13 process negotiating, whatever might happen, and it is a very
14 long, lengthy drawn-out process before you are given that
15 Wright to walk off the job.

16 THE COURT: That is peculiar to the Railway Act as
17 distinct from the National Labor Relations general law
18 governing, right?

19 A. That's correct.

20 Q. The question was if the bankruptcy court rejects our
21 contract, and we don't have one, does that mean we have the
22 right to strike. That was the question posed?

23 A. That was the question.

24 Q. And who responded and what was the response?

25 A. The response was from Clay Warner and he said no.

Altman-direct

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1 Absolutely you do not have the right to strike.

2 Q. Do you recall any other advisors responding to the
3 question?

4 A. I don't recall the others. I just remember Clay,
5 speaking to that.

6 Q. P 136.

7 THE COURT: J?

8 MR. PRESS: P 136.

9 THE COURT: J.

10 MR. PRESS: It is J, I am sorry.

11 THE COURT: I have J 136.

12 MR. PRESS: J 136. That's correct.

13 Q. Do you have that in front of you?

14 A. Yes, I do.

15 Q. Mr. Seltzer was the bankruptcy lawyer. He was there, on
16 April 2?

17 A. That's correct. One of the advisors present.

18 Q. What did he say about your chances or prospects of
19 prevailing in the bankruptcy court on this 1113 motion?

20 A. 99 point 99 percent that you won't.

21 Q. Is that a quote?

22 A. That was a quote.

23 Q. 99.9 chance you will fail and the Court will take your
24 contract and reject it?

25 A. That's correct.

Exhibit D

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 THEODORE A. CASE, SALLY YOUNG,
5 HOWARD HOLLANDER, PATRICK BRADY
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,

9 Plaintiffs,

10 V.

VOLUME 4
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,

12 Defendant.

13 CAMDEN, NEW JERSEY
14 JUNE 13, 2011

15 B E F O R E: HONORABLE JOSEPH E. IRENAS
16 UNITED STATES DISTRICT JUDGE

17 A P P E A R A N C E S:

18 TRUJILLO, RODRIGUEZ & RICHARD

19 BY: NICOLE M. ACCHIONE, ESQ.

20 AND: LISA J. RODRIGUEZ, ESQ.

21 AND

22 GREEN JACOBSON, P.C.

23 BY: ALLEN PRESS, ESQ. (MO. BAR)

24 AND: JOE D. JACOBSON, ESQ. (MO. BAR)

25 For the Plaintiffs.

ARCHER GREINER

BY: STEVEN FRAM, ESQ.

AND

KATZ & RANZMAN

BY: DANIEL M. KATZ, ESQ.

FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBERG, ESQ.

IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

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6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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Young-direct

40

1 at the council meeting and they were the ones subject to
2 career tragedy if we didn't have a union.

3 Q. Ms. Young, other than waiving scope, was there any other
4 option presented to the MEC that day?

5 A. There was not.

6 Q. We have got a group of six or seven lawyers and no one
7 has an idea other than surrender, is that right?

8 A. They presented no other alternative than basically to,
9 comparison of waiving scope or not waiving scope. They made
10 it, a very clear case for waiving scope.

11 Q. Do you remember any discussion about, well, if the
12 bankruptcy court takes our contract, rejected our contract,
13 will we then have a right to strike. Do you remember any
14 discussion about that.

15 A. I do remember some discussion at the very end. But I
16 don't remember exactly what was said., you know, the right to
17 strike is such a crucial element for an employee group
18 because it is the one bargaining behavior that they have to
19 keep the company from making unilateral changes to a
20 contract. The threat of a strike, I should say.

21 Q. Can you, without remembering specifics, can you remember
22 the gist of the conversation that day about whether or not
23 you would have a right to strike?

24 A. They said we would not have a right to strike.

25 Q. Who is they?

Young-direct

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1 A. Well, Bill Roberts and company.

2 Q. Again, did Mr. Seltzer, who had filed a brief saying
3 there was a clear right to strike, did he correct Mr.
4 Roberts?

5 A. He said nothing. He said nothing about it. He did not
6 mention that he had filed that in his brief.

7 Q. If you had known that, had you known that striking would
8 have been an option for you even if you lose in the
9 bankruptcy court, would that have been something important to
10 you that day to know?

11 A. Absolutely.

12 Q. Did anyone -- did any of the ALPA advisors present that
13 day tell you, you know, you need to understand something,
14 that if you do waive scope, it is going to be game over with
15 respect to the seniority issue?

16 A. No. In fact, Steve Tumblin told us we had a back stop in
17 the asset purchase agreement. They, ALPA, ALPA had told us
18 that they were going to be supportive, that this was the only
19 way to go, we would still have a process, that the reasonable
20 best efforts grievance was real, that the asset purchase
21 agreement language was real, that those were elements of
22 leverage that would provide us a process that would be, that
23 went, that end in a fair integration and discussions for
24 integration.

25 Q. Of course you still had the biggest pilot union in the

Exhibit E

1
2 IN THE UNITED STATES DISTRICT COURT.
3 FOR THE DISTRICT OF NEW JERSEY
4 CIVIL 02-2917 (JEI)

5 PATRICK BRADY, SALLY YOUNG,
6 HOWARD HOLLANDER, THEODORE CASE,
7 AND MICHAEL FINUCAN, individually
8 and on behalf of all others
9 similarly situated,
10 Plaintiffs,

11 V.

VOLUME 7
TRIAL TRANSCRIPT

12 AIR LINE PILOTS ASSOCIATION,
13 Defendant.

14 CAMDEN, NEW JERSEY
15 JUNE 16, 2011

16 B E F O R E: HONORABLE JOSEPH E. IRENAS
17 UNITED STATES DISTRICT JUDGE

18 A P P E A R A N C E S:

19 TRUJILLO, RODRIGUEZ & RICHARD
20 BY: NICOLE M. ACCHIONE, ESQ.
21 AND: LISA J. RODRIGUEZ, ESQ.

22 AND
23 GREEN JACOBSON, P.C.
24 BY: ALLEN PRESS, ESQ. (MO. BAR)
25 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
For the Plaintiffs.

ARCHER GREINER
BY: STEVEN FRAM, ESQ.

AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBERG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

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2 Pursuant to Section 753 Title 28 United States
3 Code, the following transcript is certified to be an
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above-entitled proceedings.

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14 LAWRENCEVILLE, NJ 08648
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Clarke-direct/Press

32

1 out of your mind. There is no way. How can we as pilot
2 representatives, somebody that is supposed to be watching our
3 backs of the guys that we have flown with for these years and
4 just come in and say yeah, let's throw 825 of them on the
5 bottom of the list. It is crazy.

6 Q. How did Mr. Christie explain himself, what did he say?

7 A. Basically he was, we were coming to the April 2nd, its
8 April 4 when we were going to be forced to make a decision on
9 the scope waiver.

10 Q. Right.

11 A. So everybody, in everybody's best interest, a deal would
12 be better than having to make that decision, if we could get
13 a deal that we could swallow. That deal you can't swallow.

14 That is what I told them, I said we cannot go from
15 a date-of-hire proposal and the next day show up, and offer
16 to staple 825 of our own guys.

17 First of all, that is not very good negotiating to
18 come in and negotiate against yourself.

19 And second of all, how can you really do that? How
20 can you do that to somebody? How can I do that to my friends
21 and my co-workers.

22 Q. So what happened? How did the meeting end?

23 A. Well, we stayed until probably about one or two in the
24 morning. And eventually Bob Christy and the ALPA advisors
25 were able to convince the more senior members of our

Clarke-direct/Press

33

1 committee that that obviously weren't going to be stapled
2 that there had to be some sort of a staple for the American
3 pilots to go with this. And they wanted to get a deal. So I
4 kept arguing and arguing and arguing, and trying to convince
5 them that this was not good, and eventually we ended up where
6 our proposal would be to staple 400 something pilots. So I
7 got it down to half.

8 Q. And that proposal was that made the next day, the next
9 morning?

10 A. Yeah.

11 THE COURT: Which is what, the end of March?

12 A. March 29, the next day.

13 MR. PRESS: This is J 301, Mr. Fram.

14 Q. Mr. Clarke, I handed you exhibit J 301, right?

15 A. Yes.

16 Q. What is this?

17 A. This is the proposal that we presented to the APA.

18 Q. On?

19 A. March 29.

20 MR. PRESS: We move for the admission of exhibit J
21 301.

22 MR. FRAM: No objection.

23 THE COURT: Well, before, this was, was this
24 prepared by APA, this document?

25 MR. PRESS: It says APA's understanding of TWA's

Exhibit F

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 9
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 22, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.

19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.

AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
8
9

10 LYNNE JOHNSON, CSR, CM, CRR
11 OFFICIAL COURT REPORTER
12 UNITED STATES DISTRICT COURT
13 P.O. BOX 6822
14 LAWRENCEVILLE, NJ 08648
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Day-direct/Press

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1 THE COURT: And of course, as you know, it becomes
2 the defendant's turn to put its case on. So the attorneys
3 are moving along. That is a good thing.

4 Have a very safe trip home and a safe in tomorrow
5 morning at 8:30.

6 (The jury leaves the courtroom.)

7 THE COURT: Thank you, Captain. You can step down.
8 Everyone please be seated.

9 Mr. Katz, you rise.

10 MR. KATZ: Yes, your Honor. In the spirit of
11 moving things along smartly, there are some videos that ALPA
12 would like to show as part of its case, and may arise as soon
13 as tomorrow.

14 We discussed it on Monday, to some extent, and with
15 regard to Jeffrey Brundage's video, this is a situation where
16 plaintiffs did not designate any portions of Mr. Brundage's
17 deposition to show as part of their case. However, ALPA did
18 designate plaintiffs. Plaintiffs had objection and counter
19 designations and we have color coded in the fashion to which
20 you have been accustomed the --

21 THE COURT: Give it to me.

22 MR. KATZ: -- the designations and counter
23 designations and the objections and I have a copy of the same
24 thing for opposing counsel.

25 We would like to, I think we will need to show that

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1 tomorrow.

2 THE COURT: Okay. Mr. Press, Mr. Jacobson.

3 MR. PRESS: Ms. Rodriguez will be handling this.

4 THE COURT: I don't know who will do there, but I
5 would go over this if you can this afternoon and if you could
6 email me, if there is any objections that you have that are
7 not on here. Okay. So we will make sure, tonight I get as
8 many of the objections I know I don't want to see once
9 tomorrow morning I haven't seen. It is not that long.

10 MR. KATZ: No, I think it is use pages long.

11 THE COURT: It looks like a rather short one. It
12 should be, to check out the objections shouldn't be, he has
13 them marked here in yellow, the objections just make sure for
14 whatever reason, so nothing is lost in translation.

15 MR. PRESS: We will do that.

16 MR. KATZ: Your Honor, we talked about Mr. Babbitt,
17 and he is a case where plaintiffs did designate, we counter
18 designated and there are objections.

19 THE COURT: Well, the key now, he is not offering
20 those.

21 MR. KATZ: We are going to offer Babbitt.

22 THE COURT: The question is whether you offer it
23 and what does he object to and what does he ask for.

24 MR. KATZ: Precisely. We are prepared to stick
25 with what is in the joint pretrial order unless the parties

Exhibit G

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 10
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 23, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD

17 BY: NICOLE M. ACCHIONE, ESQ.

18 AND: LISA J. RODRIGUEZ, ESQ.

19 AND

20 GREEN JACOBSON, P.C.

21 BY: ALLEN PRESS, ESQ. (MO. BAR)

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1 THE COURT: I just want to put on the record a
2 couple of things. I had a conversation with counsel this
3 morning concerning the deposition of Jeffrey Brundage that
4 was proposed to be read into the record. I was very unhappy
5 with this deposition. Mr. Brundage was pretty much -- this
6 is not to question his sincerity or his honesty, but he was
7 very much an out of control witness, in the sense that you
8 ask a question, he would launch into a three- page answer.

9 He rarely gave an answer that was less than a full
10 paragraph and in many cases he gave answers that took up two
11 pages of transcript, that often, usually, launched into areas
12 that had nothing to do with the question that was being
13 asked. And of course, this was a discovery dep but, it
14 wasn't a de bene esse dep, and so when Ms. Rodriguez would
15 ask leading questions, which is not an improper technique in
16 a discovery dep because you sometimes want the witness to
17 sort of go on and on.

18 Mr. Katz started questioning him, in in many cases
19 with leading questions but even when there was a leading
20 question the answer was, he wouldn't even respond to the
21 leading question, even when he was being led he would go off.
22 So we have, we talked about this, we did that, we did this.
23 You know, their position with this. But you have no idea,
24 you know, who was talking to whom, where it was, who was
25 present, what was said. And I would, as I say, at some point

1 the objections of plaintiff are just, toward the end it is
2 like 28 pages, just, of objections I added up the pages, I
3 think it was 28 pages. But you know, that are objected to.

4 But in many cases, it is not, if not most cases, of
5 value. I just feel like I could not let any of this in
6 unless it was cleaned up some way or Mr. Brundage came to
7 court and that I could control the questioning, you know,
8 have it done the right way.

9 Now, Mr. Katz said he was going to go back and look
10 at this and, you know, see if he can work something up,
11 narrow what is being offered, et cetera. But right now I am
12 not going to let this be played in this form.

13 And the second point is on the issue of the
14 testimony of the TWA CEO, what was his name again?

15 MR. KATZ: Bill Compton.

16 THE COURT: Compton before the Senate when they
17 were investigating the acquisition of American -- not
18 investigating -- well, maybe investigating is the right word.
19 I don't know. Looking into the American acquisition, there
20 is a tape that defendant wants to play of Compton's
21 testimony. And there clearly was some kind of agreement
22 between the parties related to Compton, because his
23 deposition wasn't taken and the exchange keeps talking about
24 stipulations.

25 But for the life of me I couldn't figure out what

1 was stipulated to. I couldn't figure out what the actual
2 contours of the agreement were. I suspect at the time
3 everybody knew, but sitting here today I don't know. And
4 right now plaintiff objects to it, and so what I am going to
5 do is, Mr. Katz kindly gave me a complete transcript, he
6 gave me both the transcript, complete transcript, and then a
7 transcript of what he intends to play. Is that correct?

8 MR. KATZ: That's correct, your Honor.

9 THE COURT: And I am going to review that at some
10 point. But I want to make clear that at least today, if the
11 plaintiff has time to proceed we have to proceed with
12 something other than these two items. They can't proceed
13 today with Brundage.

14 MR. PRESS: Defendant.

15 THE COURT: What? Defendant, I mean. Can't
16 proceed with Brundage and can't proceed with Compton's Senate
17 testimony. I am not making a final ruling. At the end of
18 the day some of this might get in, but it is not in a form
19 right now.

20 MR. KATZ: We understand.

21 THE COURT: It is not that I am uncomfortable. I
22 haven't read it. I can't be confident we have, I have any
23 feeling until I see it.

24 MR. KATZ: We understand, your Honor.

25 THE COURT: Brundage I unfortunately have read, on

1 several occasions and I am uncomfortable with that. Okay, I
2 just want to get that on the record.

3 MR. KATZ: One other loosened is the video
4 testimony of Randy Babbitt. We have marked the transcript.

5 THE COURT: I haven't looked at that.

6 MR. KATZ: I haven't given it to you yet.

7 THE COURT: That explains why I haven't looked at
8 it.

9 MR. KATZ: I think that is a good excuse for not
10 looking at it.

11 MR. PRESS: I sent you our objection, we had four.

12 THE COURT: They came by email. I opened up the
13 email, and in fact.

14 MR. PRESS: I thought you had the transcript.

15 THE COURT: You sent it to two different addresses
16 both of which my blackberry picks up so I had your memo
17 twice.

18 MR. KATZ: Your Honor, I have written on the top
19 what the information is that was in Mr. Press's email. The
20 objections that are noted on the top are the ones that he
21 described in the email. The color coding, however, was put
22 on before we received that so there is more objections than
23 what plaintiff's are asserting now.

24 THE COURT: As I say, I have his memo.

25 MR. KATZ: You can ignore the color coding.

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1 A. Well, they told us that the 1113 was looming, and if the
2 1113 motion was successful, that we would be working without
3 a CBA.

4 THE COURT: Collective bargaining agreement.

5 THE WITNESS: Collective bargaining agreement.

6 Q. And so?

7 A. And so we had to get the deal done. It was being
8 impressed upon us to get the deal done, and we went back to
9 the hotel and we had a huge argument among the committee, and
10 advisors.

11 Q. Describe the argument, how that went?

12 A. Well, especially the junior portion of the committee was
13 outraged. And I felt it was too early to offer to staple
14 anybody.

15 We didn't know where Professor Tanen's proposal was
16 going to be at this point in time. We actually called
17 Professor Tanen to see if he could give us some guidance. He
18 gave us some general numbers, about where he thought he was
19 at, but nothing exact.

20 THE COURT: What date is this now, the 28 of March?

21 THE WITNESS: This was the evening of the 28th of
22 March.

23 THE COURT: The 28th.

24 THE WITNESS: Yes, sir.

25 THE COURT: Did you know that the 1113 was

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1 A. It would show a sign of weakness, offering that type of
2 a staple that early into the game. We suspected that there
3 was going to be some position that even Professor Tanen's
4 analysis was going to show that certain TWA pilots belonged
5 on on the bottom of the list but it was going to have a
6 basis, not just an arbitrary number pulled out and do this.
7 Soy I really wanted something concrete that I could use
8 rather than that.

9 Q. You mentioned in response to a previous question that
10 this was something you regretted doing?

11 A. I regretted it. I have regretted it for ten years.

12 Q. Why?

13 A. Because it was the wrong thing to do. And I made the
14 decision.

15 Q. So, but that proposal was made, right?

16 A. The proposal was made.

17 Q. This is March 29, right?

18 A. March 29, Gary Flor was one of our members of the
19 committee and he made a very elegant proposal. I think they
20 understood it. I expected some discussion on it. There was
21 very little discussion.

22 In fact, that is when we were informed that, thank
23 you, we will take your proposal, and oh, by the way, we are
24 going to have to leave today and cut the meeting today and we
25 are canceling tomorrow because we have to go meet with the

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1 A. Mid April.

2 Q. Now, this meeting, Captain Day, when did the actual
3 meeting start, the MEC meeting?

4 A. I recall it starting in the afternoon.

5 Q. All right. And before the meeting, what did you do?

6 A. We all went out to lunch together.

7 Q. When you say we, who is the we?

8 A. Well, the entire MEC and the merger committee and Duane
9 Woerth.

10 Q. Okay.

11 A. We went to the 94th air squadron and I made sure that I
12 was going to have the opportunity to sit next to Duane so
13 that I could discuss my concerns with him.

14 Q. And did you?

15 A. I did.

16 Q. What did you discuss, what did you tell him and what did
17 he tell you?

18 A. Well, I explained where we were at. I explained the
19 position that we now found ourselves in. We waived scope,
20 and I didn't feel we had a meaningful process agreement and
21 and I needed ALPA National to help create some leverage. I
22 was goes go into the meetings without anything to bargain
23 with.

24 So Duane asked, what did I suggest and I said,
25 well, I have got one thought right off the top of my head.

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1 Q. And what was that?

2 A. Well, I suggested that he telephone up and call the
3 president of APA, John Darrah, and tell him to treat us right
4 and stop this nonsense, or there wasn't going to be an
5 American pilot riding on an ALPA jumpseat in the future.

6 Q. Describe, I don't think anybody has testified about this
7 jumpseat. Can you tell us what you mean, what is a jumpseat,
8 first of all?

9 A. A jumpseat is the seat, any seat in the cockpit we
10 refer to as a jumpseat. Some of them actually fold down.
11 And a great number of pilots commute to work. They fly in to
12 work.

13 At this point in time one of the predominant ways
14 of getting to work was, we had this wonderful agreement,
15 reciprocity among virtually all the airlines where you could
16 show up, I could show up in Fort Lauderdale to go to JFK for
17 my trip and show my ID, and my pilots license, to the gate
18 agent, in Jet Blue, gate agent would go out and show it to
19 the captain, it was always the captain's discretion to
20 whether to take the jumpseat, but never seen a case where it
21 was refused. I certainly never refused anybody. And they
22 would accept you and if there was a seat in the back, you
23 would get that. If not, you would get a seat in the cockpit.

24 As a matter of fact, even when the cockpit filled
25 out, Jet Blue was kind enough to Mike Day to put him in a

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1 flight jumpseat in the back. We didn't have that authority
2 at TWA, but apparently Jet Blue did.

3 Q. Captain Day, you live in Cedar Key, Florida, how did
4 you get to work?

5 A. That was when I was in Fort Lauderdale.

6 Q. Okay.

7 A. But I judged jumpseats. And if you if your own airlines
8 was there you could use your own airlines passes, if you had
9 them. The other alternative was of course to buy a ticket.
10 But the company does not provide you transportation to get to
11 work. That is up to you. So this was probably the
12 predominant means of pilots getting to work, is using that
13 jumpseat as their backup.

14 Q. Can you recall what airlines other than TWA you used the
15 captains jumpseat to get to work?

16 A. Well, I have flown on a lot of them depending on where I
17 was coming from, Delta, when national was in existence I flew
18 on National, Eastern. Just about most of them.

19 Q. All right. From your experience as a tile lot for over
20 30 years, Captain Day, how prevalent was the use of jumpseat
21 access for pilots of airlines nationwide to get to work?

22 A. It was an accepted practice.

23 Q. Which meant what as far as its prevalence?

24 A. It was very prevalent because as I said, an a great
25 number of pilots, I had originally done a study in New York,

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1 at that time, over 50 percent of the pilots were flying in a
2 rather than driving.

3 Q. Can you recall ever letting an American pilot use your
4 jumpseat?

5 A. Oh, yeah.

6 Q. Okay. Now, getting back to this lunch with Duane
7 Woerth, what were you asking him to do with respect to this
8 jumpseat --

9 THE COURT: When was this, by the way.

10 THE WITNESS: This was, I believe it was April 18.
11 It was mid April.

12 THE COURT: It was after the waiver, after April 2.

13 THE WITNESS: Yes, yes.

14 Q. And what did you specifically ask Duane Woerth to do
15 with respect to this jumpseat privilege that captains had?

16 A. I asked him to use this as a club, call it the
17 president of APA, and threaten to withdraw and have all the
18 ALPA carriers be notified that they had to support their TWA
19 pilots, because it completely changed the leverage.

20 Q. Wait. And do what? Called the president of the APA and
21 tell him what?

22 A. And tell him to tell his negotiating committee that they
23 had to negotiate with us in good faith.

24 Q. And if they don't?

25 A. And if they don't, there would not be an American pilot

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1 riding on an ALPA carrier.

2 Q. Which --

3 A. Since there was 11,000 of their pilots and 70,000 ALPA
4 pilots, it changed the entire leverage.

5 Q. Well, it could have, had it be used?

6 A. Right.

7 Q. And what did Duane Woerth say in response to that?

8 A. He looked at me and said, I can't start a jumpseat war.

9 Q. Did you ask him why?

10 A. I was just flabbergasted. I tried to explain that this
11 was unionism. He was representing TWA pilots, not American
12 pilots. But that was his response and he wasn't going to
13 change it.

14 Q. What did you say in response, if anything, Captain Day?

15 A. I don't recall my exact words. I was so angry, I just,
16 I was afraid to say anything.

17 Q. Now, this was at lunch, right?

18 A. This was at lunch.

19 Q. Now, and then the Meg meeting followed that, the actual
20 meeting, right. Back at the MEC office?

21 A. Well, we went back as to the committee first, and I
22 explained to the committee what happened, and I was still
23 upset. So we all decide to go in and listen to Duane speak
24 to the MEC and to the members.

25 Q. And the minutes of that meeting are in evidence already.

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1 THE COURT: As opposed to the full board.

2 THE WITNESS: Yes, sir.

3 Q. This is some sort of policy making council at ALPA?

4 A. This would be like Duane Woerth's boss, as I saw it.

5 THE COURT: This would be like going to the
6 executive committee of a major corporation.

7 THE WITNESS: That's correct, Judge.

8 THE COURT: The board of a corporation.

9 THE WITNESS: Right.

10 Q. Were you allowed to speak, first of all, when about was
11 this executive council meeting that you attended?

12 A. Mid July.

13 Q. Were you allowed to speak?

14 A. I was.

15 Q. What did you say?

16 A. I made an impassioned plea. I explained that Bensel and
17 Pastore and myself, between the three of us, we had 105 years
18 of seniority.

19 TWA was one of the original groups in ALPA and gave
20 them a run-down where we were at on this, their last offer
21 was two thirds stapled, and I said we had already waived
22 scope, and now we got this denial of our latest proposal,
23 which I went in to in great detail with them, provided them
24 tapes so that they could see, DVDs, I guess, and I said we
25 needed some leverage. We didn't have anything. And I went

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1 in to some suggestions, starting with the jumpseat one. I
2 explained that one. I went into several other ones. I told
3 them these are only ones I had thought of, but you have got a
4 huge staff here that certainly can come up with better ideas
5 than I can.

6 Q. Let me interrupt you, Captain Day. You testified that
7 you asked Duane Woerth to authorize a jumpseat war, as you
8 call it, in April, three months prior. Right?

9 A. Right.

10 Q. Now you are in front of the executive council. Why
11 would you think a decision might be different?

12 A. I thought they might persuade Duane --

13 THE COURT: Duane Woerth was at this meeting, was
14 he not?

15 A. He was at the meeting.

16 THE COURT: The one in July, he was there?

17 A. Yes, Judge.

18 Q. When we were talking about this jumpseat war notion, I
19 don't think I asked you why you thought that this would
20 provide you any leverage. Can you describe that?

21 A. Well, it would call attention to what was happening, and
22 perhaps the individual American pilots then would go to their
23 representatives, and want to know what is going on.

24 Q. Why in your thinking would an American pilot be
25 motivated to do that because of this jumpseat restriction?

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1 A. Because he is going to be having to pay money to get to
2 work, or start missing flights.

3 Q. Describe that.

4 A. Well, if he can't get on this airplane to assure that he
5 is going to be getting to work, he is probably going to have
6 to buy a ticket. Most of the people that were doing the
7 jumpseat were doing them on other airlines.

8 Q. And this plan of yours, how did you sort it out in your
9 head how this would actually do something beneficial for your
10 group?

11 A. Well, I just started coming up with ideas.

12 Q. No, no, what did you think this would do, as a practical
13 matter, if ALPA had done what you requested, in your mind,
14 what would have happened?

15 A. As a practical matter, I felt that this would force the
16 APA merger and acquisition committee to come to the table and
17 help make a more reasonable, fair and equitable proposal.

18 THE COURT: Instead of the word force, would the
19 word encourage be more accurate?

20 A. Encourage, I would accept that, Judge.

21 Q. And why did you hold that belief?

22 A. Because it would have affected me in that manner, if I
23 couldn't jumpseat.

24 Q. So you presented this executive council in July and you
25 asked for ALPA to engage in this jumpseat war, right?

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1 A. Yes.

2 Q. Did you have any other ideas that you expressed to the
3 executive owe on?

4 THE COURT: Before you go off the jumpseat, if you
5 deny an American pilot a jumpseat, that is a pretty -- that
6 was then a pretty big airline, a fairly large number of
7 routes.

8 What if they started denying jumpseats to all the
9 other pilots, wouldn't that, I mean, wouldn't the pilots
10 think twice, wouldn't a union think twice about, yeah, you
11 will block American pilots but they are going to block our
12 entire membership from doing this, and that is a pretty big
13 airline.

14 Did anybody express that view? I mean what is good
15 for the goose is good for the gander.

16 THE WITNESS: Judge, there was certainly that
17 threat. However, there were 70,000 National ALPA members
18 versus 11,000 APA members, so it reversed the leverage.

19 THE COURT: Well, it is not just numbers of pilots,
20 it is number of routes that you had. I mean the number of
21 people using jumpseats are not necessarily going to be
22 exactly proportional to the number of pilots.

23 THE WITNESS: That is true, there is not an exact
24 correlation.

25 THE COURT: Some Emery pilots or Fed Ex pilots or

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1 Alaska Airlines pilot might not be using jumpseats as much.
2 There is, you know, there is a difference there. I am just
3 wondering, did anybody discuss that issue?

4 A. No, we didn't get into that aspect of it, Judge.

5 THE COURT: It could hurt ALPA.

6 A. I knew there were going to be sacrifices and I explained
7 that, that, you know, that is what unionism was about, and
8 giving some examples of strikes and so on. But that we would
9 have to pull together as a union, and who are we representing
10 here.

11 THE COURT: Okay.

12 Q. Staying with that same line the Judge had, what
13 carriers, what major carriers, did ALPA represent?

14 A. United. Delta. Northwest.

15 THE COURT: Continental?

16 A. Continental came somewhere in there. I don't know
17 whether they were back at that time yet.

18 Q. And what carrier, or single carrier, did the APA
19 represent?

20 A. Just American.

21 Q. All right. And this notion that, yeah, there could have
22 been a reciprocal reaction from the APA, they might deny
23 jumpseat privileges to ALPA pilots, right?

24 A. I am I am sure they would.

25 Q. In so why did you expect your union to go along with

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1 something like that?

2 A. Because that is what unionism is about, it is protecting
3 your members.

4 Q. All right. But why, why would a Delta pilot, let's say
5 he or she shows up for work or to jumpseat to get to Chicago
6 or wherever. And that, and he wants to get on an American
7 flight. Dent jumpseat. Why would that pilot want to sign up
8 for something like that?

9 A. Well, nobody would want to, but it is the same as an
10 assessment, you do it because you are all in the same union
11 and you are all trying to protect one another.

12 Q. At this meeting where you asked to engage a jumpseat
13 war, did you make a specific request for action?

14 A. I threw out several ideas. I suggested informational
15 picketing. I suggested the threat of litigation. I
16 suggested that they go to the AFL-CIO and have them put
17 pressure on the APA saying that they didn't, they would not
18 let them know that organization because ALPA was part of that
19 which was even bigger yet. I suggested that they go back to
20 American and threaten American to put them on the "do not
21 buy, boycott list" that the AFL-CIO had.

22 Q. What is the AFL-CIO and how is ALPA connected to it?

23 A. That is a confederation of more unions, on a bigger
24 scale. At that time it might have had, I would be
25 speculating, but it was in the millions of members.

Day-cross/Fram

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1 policy, section 15, of the ALPA administrative manual which
2 provided --

3 MR. PRESS: Your Honor -- go ahead.

4 MR. FRAM: Can I ask the whole question first?

5 MR. PRESS: I am sorry. I thought you with were
6 finished.

7 Q. Did he tell you at that time that section 15 -- 115 of
8 the ALPA Administrative Manual specifically prohibited the
9 denial of jumpseat privileges as a means of punishing,
10 coercing or retaliating against other pilot groups or
11 individuals not supported by ALPA?

12 MR. PRESS: Your Honor, I object. He is asking the
13 same questions now five times.

14 THE COURT: No, but I think, I mean I think that is
15 legitimate cross examination. The answer may be no, in which
16 case that is the end of it. But I think that is legitimate
17 cross, particularly if he has -- well, I will allow it.

18 A. I am going to tell you. Absolutely not. That is the
19 first I heard of it, is you reading this.

20 Q. Were you familiar with the ALPA administrative manual
21 back during the period in which you were a member of the TWA
22 MEC?

23 A. Familiar with it? I knew it existed. Did I study it?
24 No.

25 Q. Did you have a copy of it back in the nineties when you

Day-cross/Fram

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1 were a member of the MEC?

2 A. I believe they give a copy to each new LEC officer.

3 Q. When you got appointed to the unsecured creditors
4 committee in February of 2001, did you have a copy of,
5 accessible to you then?

6 A. There was one I am sure in the MEC office.

7 Q. When you became chairman of the merger committee, did
8 you have a copy of the ALPA administrative manual accessible
9 to you then?

10 A. Same answer.

11 Q. Well, did you understand that when you were acting as
12 merger chairman, chairman of the merger committee, that you
13 were expected to act consistent with ALPA's Constitution,
14 bylaws, and other regulations?

15 A. Yes.

16 Q. Did you make reference to the Constitution, bylaws, and
17 other regulations to satisfy yourself that what you were
18 doing was consistent with them?

19 A. No. It was a reference made.

20 Q. When you weren't before the ALPA executive board, I
21 think you said it was some point in July or thereabouts and
22 made your plea for them to authorize a jumpseat war. Do you
23 recall talking about that earlier today?

24 A. You are are you talking about the executive board or the
25 executive council.

Day-cross/Fram

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1 Q. Which did you say it was, did you say it was the
2 executive council?

3 A. What I refer to as the executive council.

4 Q. That is the group --

5 THE COURT: That is the smaller group?

6 A. Yes, sir.

7 Q. That is the smaller group that has representatives of
8 all of the other pilot groups, all the other pilot groups
9 that were represented by ALPA, yes?

10 A. Yes.

11 Q. Tell us how many people were there at that meeting
12 where you and been Bensel and Pastore, was he the third guy
13 there?

14 A. Yes, he was.

15 Q. How many other pilot representatives were there when you
16 and Bensel and Pastore made your plea?

17 A. Are you talking about how many persons were on the
18 executive council or how many pilots were in the room.

19 A. Well, let's find out how many other pilot were in the
20 room. How many nonTWA pilots were in the room.

21 A. I am guessing seven to ten.

22 Q. How many other pilot groups, pilot airplane groups,
23 airline groups, did they represent?

24 A. Well, the executive council represented all of ALPA's
25 carriers.

Day-cross/Fram

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1 Q. So dozens and dozens of other carriers, yes?

2 A. Yes.

3 Q. And they told you when you asked for a jumpseat war that
4 they would not agree to it, yes?

5 A. No, they didn't tell me anything at that time.

6 Q. So you got no reaction whatsoever to your request for a
7 jumpseat war?

8 A. The reaction that I got was dealt take pilot telling me
9 I was there asking for money. That was the reaction I got.

10 Q. So did you get any explanation for why any of those
11 people felt, let me take a step back. Did any of them
12 communicate to you that they thought a jumpseat war was a bad
13 idea?

14 A. I do not remember that. You are reading that to me for
15 the first time that I have heard that.

16 Q. Well, during the entire period in which you were
17 pressing for a jumpseat war, are you telling us that no one
18 ever told you that ALPA had a policy which prohibited the use
19 of jumpseat wars?

20 A. That is what I am telling you.

21 Q. To get leverage over another pilot group?

22 A. That is the best of my recollection.

23 Q. You talked about some litigation ideas this that Mr.
24 Wilder had. Do you recall that?

25 A. Yes.

Day-cross/Fram

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1 that?

2 A. I don't recall that.

3 Q. So you don't recall that the pressure to meet late March
4 and try to reach an agreement was pressure that came from the
5 APA and American. That is what you are telling us?

6 A. I am telling you that the pressure was not coming from
7 APA. The pressure was coming from ALP national.

8 Q. So you don't recall anything from the APA side saying we
9 need to do this quickly because of these other issues. That
10 is your testimony?

11 A. That's correct.

12 Q. In terms of the offer that was made by your committee,
13 the one I think it involved stapling about 425 pilots?

14 A. Yes.

15 Q. You agreed to make that offer, yes?

16 A. I did.

17 Q. You as the chairperson of the merger committee agreed to
18 make the offer, yes?

19 A. I did.

20 Q. Was there a division within the committee about whether
21 that was a good idea or a bad idea?

22 A. We didn't have a vote, if that is what you mean. But
23 there there was certainly discussion and arguments on it.

24 Q. You claim that the people from ALPA who you identified
25 recommended that you offer to staple over 800 people?

Day-cross/Fram

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1 A. Yes.

2 Q. What did they say about why they were recommending that,
3 do you recall?

4 A. Not specifically.

5 Q. You have no recollection of why they swooped in,
6 unannounced, and said, you have to agree or propose that 825
7 people be stapled?

8 A. They told us this was what it was going to take to get
9 the deal done.

10 Q. Do you recall them saying anything else about why they
11 were making that recommendation?

12 A. No, I don't.

13 Q. Your committee disregarded the recommendation. Right?

14 A. Well, we disregarded 800, yes.

15 Q. The recommendation was 800, and you disregarded it,
16 right?

17 A. That's correct.

18 Q. I think you told us yesterday about Carl Icahn showing
19 up at one of the bankrupt bankruptcy hearings and trying to
20 bull Lee people. Do you remember that?

21 A. Yes.

22 Q. You weren't bullied by Carl Icahn, were you?

23 A. Not at that upon one, no.

24 Q. You weren't bullied by these ALPA advisors on the
25 evening of March 29, right?

Day-cross/Fram

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1 A. I was pressured.

2 Q. Pressured. Pressured in the sense that they explained
3 to you why they thought their suggestion was a good idea?

4 A. I was pressured in that they were conveying an urgency,
5 and that they knew something I didn't know.

6 Q. Well, did you ask them whether they knew that you didn't
7 know?

8 A. I don't recall if we got into those specifics or not. I
9 am sure it came it up. But I don't recall.

10 Q. Within the committee, the most junior member of the
11 committee, Sean Clarke, was the one who was most upset about
12 the idea of stapling TWA pilots, right?

13 A. Yes.

14 Q. And the other members of the committee, what views, if
15 you recall, did they express about the idea of stapling as
16 many as 825 TWA pilots?

17 A. I don't think anybody was in favor of it.

18 Q. Who was in favor of stapling 425?

19 A. Well, I don't think anybody was in favor of it. I can't
20 recall who was adamantly against it and who wasn't.

21 Q. If no one was in favor of it, how did it come that your
22 committee proposed that to the APA the next day?

23 A. What I am saying here, Mr. Fram, is that we reluctantly
24 decided to do it. Nobody was in favor of it. We didn't
25 vote.

Exhibit H

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 11
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 27, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND

20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND

KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
18 OFFICIAL COURT REPORTER
19 UNITED STATES DISTRICT COURT
20 P.O. BOX 6822
21 LAWRENCEVILLE, NJ 08648
22
23
24
25

Woerth/direct

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1 A. Oh, yeah. But I assumed that was going to happen. He
2 didn't have to warn me. I knew it was going to happen.

3 Q. And in addition to the arrangements for the request for
4 consultants to the executive council and arranging for
5 special bankruptcy counsel, what else did you do?

6 A. I reached out to then President Darrah, I wanted to have
7 a conversation with him. I wanted at some point to be able
8 to address the American pilots and ask, do my -- that they
9 would do much better, that they would not staple the American
10 -- the TWA pilots to their list, that we would have a process
11 that would be fair, and, but mostly just preparing the
12 council, my duties at ALPA and reaching out to Mr. Carty and
13 told him he wanted to make sure the transaction flows.

14 Q. Did you talk to Mr. Carty at this time?

15 A. I talked to himself times in the month of January of
16 that year.

17 Q. Tell us what Mr. Carty said to you in those telephone
18 conversations and what you said back to him, please?

19 A. He was emphasizing that he was, that he hoped it was
20 going to close, that he knew my opinion on stapling pilots to
21 the bottom. I opposed that. It was not ALPA's merger
22 policy.

23 He just reiterated that I needed to know that if
24 the pilots' joy at being acquired went away and was being
25 replaced by a feeling that they could somehow have the

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1 transaction, that American would buy them and still permit an
2 arbitration, that I should disabuse myself them of the notion
3 that that was absolutely not going to happen.

4 Q. That is what Mr. Carty told you?

5 A. Mr. Carty told me that, and this was again, he learned
6 his lesson, a bloody lesson, in the Reno debacle, that even
7 if American pilots are unreasonable in this regard, that is
8 what they were, and he was not prepared to destroy further
9 his relationship with APA, and so this was the demand he was
10 willing to countenance, either the scope was waived or no
11 transaction. He was very emphatic.

12 Q. And you said you had several conversations with, was
13 this repeated in the other conversations you had as well?

14 A. Probably only mentioned. It was mostly the first
15 conversation, to make sure there was no doubt in my mind that
16 the transaction could only close under one set of
17 circumstances.

18 Q. Can you tell us anything about your conversation with
19 Mr. Darrah, the president of the Allied Pilots Association?

20 A. They were also briefed. He was fairly new to his
21 position. I think he had just gotten the job in November,
22 and he said he worked for the board of directors and they
23 had a policy, and his duty was to the board, but he would
24 try to work with me, but he was fairly noncommittal at that
25 time.

Woerth/direct

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1 Do you recognize this document, Mr. Woerth?

2 A. Yes.

3 Q. Would you tell us what it is, please?

4 A. It is a pilot unity resolution. It is essentially the
5 resolution of our board of directors on the methodology to be
6 used in support for trying to organize and merge with
7 independent pilots associations that were identified in the
8 resolution.

9 Q. And --

10 THE COURT: Is this being offered?

11 MR. KATZ: Yes, sir.

12 THE COURT: Any objection?

13 MR. JACOBSON: No, your Honor.

14 THE COURT: Okay. D 2 in evidence.

15 MR. KATZ: Thank you.

16 THE COURT: ALPA wanted to have APA become part of
17 its union, didn't they? You wanted to invite some by some
18 modality, get those 11,000 American pilots to be ALPA
19 members, didn't you?

20 A. Our mission statement was everyone --

21 THE COURT: You wanted them because they were a big
22 union, they were a dues paying -- You wanted them to be ALPA
23 members?

24 A. Of course. They were certified in 1963 and I think
25 every union president since would hope would to be the

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1 further resolved, and numbered paragraphs. I would like to
2 get to the number 3 item. Proposed merger agreements with
3 independent pilots associations will be subject to approval
4 by the executive council and ratification by the executive
5 board.

6 So did this resolution reflect the preferred method
7 that you just stated?

8 A. Yes, it did.

9 Q. Is this the method that you employed with the a, that
10 the association employed, with the Continental pilots?

11 A. Yes.

12 Q. So how did it start, was their action taken by the
13 governing body of the Continental pilots?

14 A. Eventually it started with my approaching their
15 leadership, probably in 1999. And it took a lot of months to
16 develop a bond and a trust that this is something we should
17 do together, so it is probably six months of spade work, if
18 you will, trying to nurture a relationship and then got them
19 very interested to the point I wanted to make sure that the
20 Airlines Pilot Association would approve the merger, and they
21 needed the confidence that the entire board of directors
22 would welcome Continental back. That is really what the
23 principle focus of the whole reason to have this pilot unity
24 resolution, it was about Continental, it wasn't about Fed Ex
25 and it wasn't about American.

Woerth/direct

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1 Q. Did you give the Continental pilots that union, that
2 they would be welcomed back into the association?

3 A. I did but they wanted the assurance from the entire
4 board of directors, not just from me. That what is this do.

5 Q. That is D 2, the unity resolution was a reflection of
6 the desire of the entire Air Line Pilots Association board to
7 welcome the Continental pilots back?

8 A. Continental was the mission right in front of us and the
9 obstacle we were trying to clear. We also included everyone
10 else, because why not? We have a mission statement to
11 organize everyone, merge everyone, let's list everyone but
12 the reason we needed this unity resolution was we had stalled
13 at Continental. Without it we were not going to be able to
14 get done.

15 Q. Did you say there was a million and a half dollars
16 budgeted for organizing the Continental pilots?

17 A. Yes.

18 Q. That was to be spent in 2001?

19 A. Spent from the end of 2000, we went right immediately
20 back to work when this was, resolution was done, and we
21 concluded the merger in April, Continental pilots voted in
22 mid April of 2001, and they became official members June 1st,
23 2001. Then we went straight into the Fed Ex campaign.

24 Q. All right. That was done with cards or with a merger
25 agreement?

Woerth/direct

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1 of the membership eventually.

2 Q. By April of 2001?

3 A. Yes.

4 Q. Did you, from time to time, report to the ALPA Executive
5 Council about the progress that was being made under the
6 pilot unity resolution, exhibit D 2?

7 A. Yes.

8 Q. I am not sure whether 243 and 44 are in every?

9 THE COURT: D or P.

10 Q. 243 and 244s. They are in evidence. I have copies for
11 the Court.

12 THE COURT: They are both in evidence.

13 Q. You are familiar with these documents?

14 A. Yes.

15 Q. Are these the minutes from the ALPA executive council
16 meetings in January and April, 2001, Mr. Woerth?

17 A. Let me read it. Yes.

18 Q. All right. Could we focus on the list of attendees for
19 the January meeting. Exhibit D 243.

20 MR. KATZ: I am sorry. P-243.

21 MR. KATZ: Your Honor, I misled you. I think P-243
22 and P-244 are the documents I had in my hand. Are they in
23 evidence?

24 THE COURT: I don't know. D 243 and, let me check
25 P 243 and 244.

Woerth/direct

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1 that road now.

2 Q. And did you agree with that decision?

3 A. Yes, I did.

4 Q. Could you think of anything that you could have done or
5 that ALPA could have done to persuade the Allied Pilots
6 Association to go along with the seniority integration
7 process that ended up with arbitration?

8 A. I do not.

9 Q. All right. After the MEC made this decision on April 2,
10 you made an appearance, did you not, at the Allied Pilots
11 Association board of directors meeting in April, 2001?

12 A. Yes, I did.

13 Q. Would you tell us how that came about, please?

14 A. I requested a meeting and asked that president of APA,
15 John Darrah at the time, it was going to be in Texas, in
16 Dallas, to meet with American Eagle pilots and I wanted this
17 opportunity to talk to the board to advocate the position of
18 the TWA pilots in in this integration.

19 Q. Did Mr. Darrah extend an invitation to you to appear
20 beer before the Allied Pilots Association board on April 5?

21 A. Yes, he did.

22 Q. You accepted that invitation and addressed the board?

23 A. Yes, I did.

24 Q. Tell us, what did you tell the board?

25 A. I told the board that the TWA pilots had made a very

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1 MR. KATZ: Yes, that came in through the Rachsford
2 video.

3 THE COURT: That was already in.

4 Q. This is the executive council meeting minutes of April 9
5 to 11, 2001. Do you have that? Can you put that up?

6 A. I am trying to find it. Executive council minutes.

7 Q. Right. You are familiar with this document, Mr. Woerth?

8 A. Yes, I am.

9 Q. Let's flip to page 12. There is a briefing to the
10 board. The executive council that is noted here under the
11 heading agenda item number 3, organizing slash pilot unity
12 campaign review.

13 Did you provide that?

14 A. Yes.

15 Q. And what was the purpose of this review?

16 A. Well, we are required to update I think the executive
17 council at every meeting so we give them the review of the
18 status of where we were.

19 Q. The second paragraph, Brian, can you blow that up,
20 please?

21 The minutes say the association has expanded its
22 activities with four major independent pilot unions, it names
23 them. In an effort to achieve the associations goal of
24 unifying the pilots of the United States and Canada under the
25 ALPA banner.

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1 listing things before April 2 and after April 2, you attended
2 the APA board of directors. That was on April 5, right?

3 A. Yes.

4 Q. Then on April 23 you attended the TWA MEC meeting. And
5 and met with the TWA pilots?

6 A. Yes.

7 Q. And do you remember taking part in any of the seniority
8 integration discussions after this point in time?

9 A. It was later in the summer when the facilitation
10 started. 2, I took the opportunity twice to attend the
11 facilitation.

12 Q. What city were those talks being held in?

13 A. In Washington, D.C.

14 Q. Who were the participants in those talks?

15 A. There was merger committees of both of American pilots
16 and the TWA pilots.

17 Q. Anyone else present?

18 A. I think the facilitator was also present.

19 Q. That was Rolf Dalton?

20 A. That's correct.

21 Q. And he is a nationally recognized arbitrator and
22 mediator?

23 A. That's correct.

24 Q. With experience in airline industry disputes?

25 A. Yes.

Woerth/direct

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1 Q. Were there also lawyers for the two sides there?

2 A. On at least one occasion I believe both Roland Wilder
3 and Wes Kennedy were both present, I believe.

4 THE COURT: What is the second name?

5 A. Wes Kennedy I believe is the attorney that the American
6 pilots were using. Wes Kennedy.

7 Q. He was their seniority lawyer?

8 A. Yes.

9 Q. Like Mr. Wilder was for the TWA pilots?

10 A. That's correct.

11 Q. And what was the subject being discussed at these
12 meetings?

13 A. Well, they were having facilitated discussions to get to
14 a negotiated settlement of integration. I came to support
15 the TWA pilots and also to encourage the importance of a
16 negotiated settlement, and the sooner they got one, the
17 better.

18 So I was trying to encourage both parties, both
19 parties honestly to stretch and try to reach an agreement.

20 Q. And how did it come about that you attended this
21 session?

22 A. I asked the party, I think Bob Pastore asked if I could
23 show the support for the TWA pilots, my physical presence at
24 the meeting, so I complied with that.

25 Q. What did you say when you were there?

Woerth/direct

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1 A. I encouraged to the Allied Pilots that they, of course
2 were going to have to get off that stapling proposal. They
3 are going to have to stretch, I reminded them what I told
4 them in Dallas, you shall going to have to get way past where
5 you think you can have a comfortable, fair settlement that
6 you can be proud of, and American employees as well as
7 Allied.

8 Everybody needs to get off their current positions
9 because it was like trench warfare. You weren't going to get
10 a deal with both sides staying exactly where they were and
11 just staring at each other. There hadn't been a lot of
12 movement. That is what I told them.

13 Q. Mr. Woerth, it has been suggested in these proceedings
14 earlier before today, that the TWA pilots might have
15 benefited if you had threatened litigation at the meeting you
16 are referring to. Did you consider that?

17 A. I didn't think litigation would be helpful. In fact, it
18 would be a total distraction, and might end the
19 negotiations.

20 Q. Why did you think that?

21 A. There was no legal foundation to compel American
22 Airlines pilots to even negotiate. They had a contract that
23 said they could do what they were going to do. Nobody
24 appreciated that. I certainly didn't. But I didn't see a
25 legal argument. There was a morally persuasive argument to

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1 do better, but not a legal argument to compel them to do
2 better.

3 So my experience is this: You can't sue people
4 into liking you and making a deal. If you sue somebody, they
5 go into defensive huddle and just prepare to win the lawsuit.
6 They stop bargaining.

7 So I thought litigation, while bargaining, in my
8 opinion, that is a terrible strategy.

9 Q. All right. So in the summer, we will call this
10 seniority list integration negotiations. And you attended
11 one or two sessions?

12 A. That's correct.

13 THE COURT: You met with one or two?

14 A. I am pretty sure it was back to back days, your Honor.

15 THE COURT: Two-day meeting.

16 A. I attended two days in a row. I think they met longer
17 but I think I went two days in a row. That is my
18 recollection.

19 Q. Let me refer you to exhibit D 181 which is in evidence.
20 It is a summary of your comments to the April 23 MEC meeting.

21 A. Okay.

22 Q. With regard to this issue, what you said on the second
23 page at the top, the MEC reports that you said TWA MEC had
24 made a realistic assessment of their situation, made the hard
25 decision and now APA needs to get realistic and make a hard

Woerth/direct

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1 decision. Is that an accurate reflection of your comments at
2 the meeting?

3 A. Yes, it is.

4 Q. Thank you. Did you meet with any TWA pilots separately
5 from the meeting at about that time while you were in St.
6 Louis?

7 A. In a completely separate meeting, I don't recall that.

8 Q. Like a lunch meeting, for instance?

9 A. I think we probably had lunch with the officers. That
10 seems plausible. I don't have a specific recollection of it.

11 Q. Do you recall a request by Captain Mike Day, the
12 chairman of the merger committee for the TWA pilots, to
13 initiate a jumpseat war?

14 A. Yes.

15 Q. Was that made at or about that time?

16 A. I believe it was.

17 Q. And what was your response?

18 A. My response was that we had ALPA policy prohibiting that
19 and we had a national jumpseat policy, that we weren't going
20 to engage in a jumpseat war. That would not help the TWA
21 pilots and inconvenience and anger everyone. Again, I
22 thought this was another suggestion that was going to harm
23 the process, not help the process. And not just at American
24 and TWA, it would have started involving all the other
25 airlines in a disruption of everybody's life. But most

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1 THE COURT: It seems to go up only to section 75.

2 MR. PRESS: And it is not all inclusive through
3 that section.

4 THE COURT: No. They seem to be in numerical
5 order. And the jumpseat policy doesn't appear to be part of
6 it.

7 MR. KATZ: Let me ask the witness a few questions
8 about D 411 and maybe that will clear this up.

9 THE COURT: All right.

10 Q. Mr. Woerth, do you recognize the pages that have been
11 marked as did 411?

12 A. It has been removed from my screen.

13 Q. You should have a copy of it on the stack of papers.
14 That I gave you at the break?

15 A. All right.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. Would you tell the Court what it is, please?

19 A. The jumpseat policy as proposed and adopted by the
20 executive board.

21 Q. Turning to the second page. Can tell us when this
22 became effective?

23 A. It is executive board, 1997, amended by the board in
24 2000.

25 Q. And do you see the date in the upper right-hand corner?

Woerth/direct

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1 Q. And how did it come up?

2 A. It came up almost every dispute between pilot groups
3 could be for a merger, it could be with RJ issues, regional
4 issue, big airline, any dispute whatsoever, any dispute
5 whatsoever somebody usually wanted to start a jumpseat
6 campaign. And so I would estimate at least three or four
7 times a year somebody from a different airline made the same
8 request that Captain Day did.

9 Q. Done and did you have a standard employee or did you say
10 something different?

11 A. Each time it is against ALPA policy and we are not going
12 to have a jumpseat war.

13 Q. Is that what you told Captain Day?

14 A. Yes.

15 Q. And did you refer him specifically to the paragraph
16 marked with an X there.

17 MR. JACOBSON: Your Honor, I think this is very
18 leading at this point.

19 Q. Would you read the paragraph that begins?

20 THE COURT: I will allow it.

21 Q. Would you read the paragraph that begins, the sentence
22 that begins denial of jumpseat privileges?

23 A. Yes. Denial of jumpseat privileges as a means of
24 punishing, coercing or retaliating against other pilot groups
25 or individuals is not supported by ALPA. The jumpseat and/or

1 with the APA caused them to not staple all of the TWA pilots
2 to the bottom of the list. Is that correct, sir?

3 A. That wasn't the only consideration, but I think I helped
4 that.

5 Q. All right. When do you think did you that, sir?

6 A. The first time I talked to John Darrah which was right
7 after the transaction was announced and then again in April.

8 Q. When did you think that you persuaded them that they
9 shouldn't staple everyone?

10 A. I am not sure if that was the only persuading person but
11 I made that argument. I am not sure when they made their
12 decision. I think it might might have been before that.

13 Q. You don't know when that was?

14 A. No, I don't know when it was.

15 Q. He we talked about the major contingency fund. That is
16 a pool of money roughly 70 million in cash, 20 million in
17 property, that ALPA tries to maintain for major contingencies
18 like strikes and the like, correct?

19 A. Yes.

20 Q. All right. And you viewed that this proposed merger
21 between TWA and a nonALPA carrier, the acquisition of assets,
22 however you want to characterize it, that would be something
23 that would come within the major contingency, correct?

24 A. I know TWA had been given multiple grants of the major
25 contingency fund dating back to 1988.

1 transcript, of your comments to the APA board of directors on
2 Friday, October 27, 2000 with a cover letter forwarded to you
3 for your review and correction, if needed.

4 A. That is what it is, yes.

5 MR. JACOBSON: At this time I offer P 10 in
6 evidence.

7 MR. KATZ: No objection.

8 THE COURT: Okay. P 10 in evidence.

9 Q. Let's look at the cover letter first. It is addressed
10 to you and it is signed, "Fraternally, by Captain John
11 Darrah, president of the APA?" Right?

12 A. Yes.

13 Q. Addressed to you, Captain Woerth. Could you -- oh, you
14 got it there. All right. Thank you. Thanks you for coming
15 to their headquarters, right?

16 A. Yes.

17 Q. Thanks you for sharing your goals about the unity
18 campaign?

19 A. Yes.

20 Q. And that is the unity campaign that includes bringing
21 APA back into ALPA, correct?

22 A. Yes.

23 Q. He tells you that they, they, that is the APA, has now
24 formed an ALPA Exploratory Committee, correct?

25 A. That's correct.

Woerth-cross/Jacobson

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1 Q. That is a committee that is going to explore what the
2 pluses and minuses are of APA reaffiliation with ALPA,
3 correct?

4 A. Yeah.

5 Q. They plan on working on that on the next three months,
6 to have that committee do its investigation. Correct?

7 A. That is what it says.

8 Q. All right. And you have apparently committed to provide
9 their committee chairman with materials and assistance and to
10 and pursues his investigation, correct?

11 A. I believe when they were there they asked for certain
12 documents and I told them we would provide it to them, sure.

13 Q. You did provide it to them, right?

14 A. I would hope so.

15 Q. Speaking of which, I have here a couple of books which I
16 just want you to identify first. You are familiar with the
17 book, Flying the Line?

18 A. Sure.

19 Q. This is a history of the first 50 years of ALPA,
20 correct?

21 A. Yes, it is.

22 Q. It was written in cooperation with ALPA?

23 A. I believe so, sure.

24 Q. When it was first published it was serialized in ALPA's
25 magazine, Airline Pilot?

Exhibit I

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 12
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 28, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND

20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND

KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

Woerth-cross/Jacobson

2

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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18 LYNNE JOHNSON, CSR, CM, CRR
19 OFFICIAL COURT REPORTER
20 UNITED STATES DISTRICT COURT
21 P.O. BOX 6822
22 LAWRENCEVILLE, NJ 08648
23
24
25

Woerth-cross/Jacobson

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1 Q. ALPA remembers who the scabs are in their various job
2 actions, correct?

3 A. Yes.

4 Q. In fact, you keep lists of who the scabs are, to the
5 best you know, from every strike going back to 1931, Century
6 Airlines?

7 A. We do not keep a list.

8 Q. You do not keep a list?

9 A. We do not keep a list.

10 Q. You do not keep a list and provide them to your pilots
11 so they know who are scabs and who are not?

12 THE COURT: Who is naughty and who is nice?

13 MR. JACOBSON: Yes, your Honor.

14 THE WITNESS: Your Honor, you should know that that
15 has been determined to be illegal. We do not do that.

16 THE COURT: I would have thought so.

17 THE WITNESS: We do not, ALPA does not.

18 THE COURT: Your answer to the question is you
19 don't keep such lists.

20 THE WITNESS: That's right.

21 THE COURT: All right.

22 Q. Let me give you something that is not marked as an
23 exhibit because it won't be offered as an exhibit but perhaps
24 you will find it useful.

25 MR. KATZ: Your Honor, I object to any examination

Woerth-cross/Jacobson

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1 THE WITNESS: No, your Honor, it does not.

2 THE COURT: Okay. Go on to the next subject. You
3 can't use this document for any purpose. All right.

4 MR. JACOBSON: Maybe I can use this document. Mark
5 this as plaintiff's exhibit 449.

6 THE COURT: 44 what?

7 MR. JACOBSON: 449, your Honor.

8 MR. KATZ: I object to any cross examination of the
9 witness with regard to this document. This is totally beyond
10 the scope of the direct examination. All this business about
11 scabs has nothing to do with this case. No one has accused
12 American pilots or TWA pilots of being scabs.

13 THE COURT: They didn't have a strike so we never
14 had the issue of anybody crossing a picket line.

15 MR. JACOBSON: This goes to the question of jumpseat
16 privilege. This witness testified on direct examination that
17 it is improper to exclude, under ALPA policy, it is, as a
18 means of punishing, coercing or retaliating against other
19 pilots or groups or individuals. It is not supported by
20 ALPA. This is heading toward that.

21 MR. KATZ: I object. The jumpseat policy is in
22 evidence. If he wants to ask Captain Woerth about jumpseat
23 policy, that is one thing. This whole scab issue is a total
24 red herring.

25 THE COURT: I see nothing that would permit

Woerth-cross/Jacobson

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1 questioning on this document.

2 MR. JACOBSON: Look at the very bottom of the page,
3 your Honor, at the name of the document.

4 THE COURT: Yeah?

5 MR. JACOBSON: I think I ask him whether he is
6 familiar with this document and some other questions on that
7 line.

8 THE COURT: Let me see where you are going. What
9 is your next question.

10 Q. All right. Mr. Woerth, is it not a fact that as a
11 matter of unwritten policy, the Air Line Pilots Association
12 encourages or directs its members to exclude from their
13 jumpseats pilots who are characterized as scabs?

14 A. Are you saying is that ALPA's policy?

15 Q. I said is that ALPA's policy or practice?

16 A. No, it is not.

17 Q. It is not at all?

18 A. No.

19 MR. JACOBSON: That is his testimony.

20 THE COURT: In our case there is no strike. There
21 is no issue, the issue of the jumpseats wasn't to keep out
22 scabs. It was to keep out everybody. It was to keep --

23 MR. JACOBSON: No.

24 THE COURT: It was to keep the 11,000 American
25 pilots from riding in the jumpseats.

Woerth-cross/Jacobson

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1 MR. KATZ: American pilots weren't scabs. They
2 were working.

3 THE COURT: They were working. They weren't scabs.

4 MR. JACOBSON: The policy is denial of jumpseat
5 privileges as a means of punishing, coercing, retaliating
6 against other pilots, groups or individuals is not supported
7 by ALPA. His contention was I didn't offer a jumpseat.

8 THE COURT: Don't want to coerce the American
9 pilots because of this policy. I am asking him whether they
10 were punishing pilots through groups or individuals,
11 notwithstanding the language because of strike breakers or
12 other scabs.

13 THE COURT: He answered that question.

14 MR. KATZ: He answered that question.

15 THE COURT: He said no.

16 MR. JACOBSON: I understand. I am ending that
17 question.

18 THE COURT: All right.

19 MR. JACOBSON: I have no further questions for this
20 witness, your Honor.

21 THE COURT: All right. This will be in the area
22 now of redirect.

23 MR. KATZ: Yes, you your Honor, I have a few
24 questions on redirect.

25

Exhibit J

1
2 IN THE UNITED STATES DISTRICT COURT.
3 FOR THE DISTRICT OF NEW JERSEY
4 CIVIL 02-2917 (JEI)

5 PATRICK BRADY, SALLY YOUNG,
6 HOWARD HOLLANDER, THEODORE CASE,
7 AND MICHAEL FINUCAN, individually
8 and on behalf of all others
9 similarly situated,
10 Plaintiffs,

11 V.

VOLUME 13
TRIAL TRANSCRIPT

12 AIR LINE PILOTS ASSOCIATION,
13 Defendant.

14 CAMDEN, NEW JERSEY
15 JUNE 29, 2011

16 B E F O R E: HONORABLE JOSEPH E. IRENAS
17 UNITED STATES DISTRICT JUDGE

18 A P P E A R A N C E S:

19 TRUJILLO, RODRIGUEZ & RICHARD
20 BY: NICOLE M. ACCHIONE, ESQ.
21 AND: LISA J. RODRIGUEZ, ESQ.

22 AND
23 GREEN JACOBSON, P.C.
24 BY: ALLEN PRESS, ESQ. (MO. BAR)
25 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
For the Plaintiffs.

ARCHER GREINER
BY: STEVEN FRAM, ESQ.

AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1
2 Pursuant to Section 753 Title 28 United States
3 Code, the following transcript is certified to be an
4 accurate record as taken stenographically in the
above-entitled proceedings.

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6 Lynne Johnson, CSR, CM, CRR
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18 LYNNE JOHNSON, CSR, CM, CRR
19 OFFICIAL COURT REPORTER
20 UNITED STATES DISTRICT COURT
21 P.O. BOX 6822
22 LAWRENCEVILLE, NJ 08648.
23
24
25

1 bargaining agreement rejected?

2 A. My understanding was that we would have no contract,
3 that employees would be basically, you know, if they were, as
4 if they were hired, would be an engineer, like I was at one
5 time, that we wouldn't have a working agreement. We wouldn't
6 have a grievance process. We wouldn't -- we would be
7 basically without a contract. Starting over.

8 Q. Did you view that as a good prospect?

9 A. No, certainly not, certainly not.

10 Q. Do you recall any discussion at these meetings on March
11 21 and 22 about what might happen in the Section 1113 motion
12 was denied meaning that TWA was unsuccessful in getting the
13 bankruptcy court to reject the contract.

14 A. I don't recall a whole lot of discussion about that at
15 the time, but we all knew that American had placed waiver of
16 certain provisions of our contract as a condition. It was
17 not a secret. It was absolutely an important issue through
18 that period of time. So the prospect that American would
19 back away from a transaction or the possibility that they
20 would back away from a transaction as a result of that or
21 threaten us or, it was always present.

22 Q. Was that possibility something you recall being
23 discussed at these meetings on March 21?

24 A. Discussed at that particular meeting, you know, I don't
25 recall it being discussed right at that particular time but

1 Q. Was there any discussion on April 1 about the
2 possibility or the advisability of a strike by the TWA
3 pilots?

4 A. Yes. There was a comment about the possibility of a
5 strike.

6 Q. Tell us who made the comment and what the comment was?

7 A. My notes reflect that Howard Hollander said, how about,
8 or what if all 24 of us, 2,400 of us, walked offer the job at
9 the same time.

10 Q. You just referred to some notes. Can you describe what
11 you are referring to, please?

12 A. Yeah. I was a sporadic note taker and a bad note taker,
13 but I made notes from time to time.

14 Q. Okay. Did you happen to make some notes about some of
15 the issues discussed at the meeting of April 1, 2001?

16 A. Yes. I expected that I would, that I was going to be
17 need to go communicate with the membership about what
18 transpired, and so I was, I think, taking notes at that time
19 to be able to do that in a better way.

20 Q. I think you referred to a letter that you wrote shortly
21 after the meeting to report to Council 2?

22 A. Yes.

23 Q. We will come to that in a minute. Let's go back to Mr.
24 Hollander's comment about the possibility of a strike. Did
25 Hollander explain his thinking, did he explain why he thought

1 people should consider a strike?

2 A. No. It was more in a sense a frustration, I think.

3 Q. Did anybody else at the meeting speak in favor of this
4 the idea of a strike?

5 A. I would hate to say that Howard Hollander was speaking
6 in favor of a strike. I think he was throwing out the idea,
7 and, so I am not sure that anybody spoke in favor of a
8 strike. It really just kind of fell on the floor like a
9 thud.

10 Q. What was your reaction to the idea of a strike of the
11 TWA pilots?

12 A. Well, my reaction was, we were trying to come out of
13 this with jobs, not without jobs. And I thought that a
14 strike was a really good way to come out of it without a job.

15 Q. All right. Do you recall any discussion by Roland
16 Wilder at the meeting on April 1, 2001, about the possibility
17 of litigation?

18 A. Yes.

19 Q. Tell us what you recall about that?

20 A. I recall the essential argument was that in our scope
21 language, we had provisions that prevented the company from
22 negotiating a transaction or a deal that didn't provide us
23 with Allegheny Mohawk labor protective provisions or
24 something like that. And it was my -- in Wilder's litigation
25 initiative was to basically put pressure on American by

Singer-direct/Fram

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1 manager didn't like him. And if we didn't have that
2 contract, we would.

3 There was another aspect to that as well and
4 several people that were involved very closely with the TWA
5 finances had, and some of them being very close to me, as
6 friends, and as fellow pilots that I have flown with, that
7 TWA was totally out of money. That there is no way that they
8 were going to continue to operate and that if the transaction
9 with American didn't close, that every single pilot would be
10 out of work.

11 And my conclusion, by the time I voted this, was
12 that, A, we might lose our union representation, but the
13 other possibility was that American would just walk away from
14 the transaction since it was a requirement of the transaction
15 that we did waive our scope objections.

16 Q. The information you referred to about TWA finances, did
17 you say you got that from some friends of yours?

18 A. No. We had a finance committee, I believe, on, Scott
19 Shwartz may have been involved on that. I know another pilot
20 named Jonathan Goldstein was on that, who has a MBA.

21 Q. So it was pilots who were gathering the financial
22 information?

23 A. They actually met with the company throughout going back
24 to probably the summer of 2000.

25 Q. Do you recall any discussion on April 1 or 2 about

Singer-direct/Fram

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1 whether the TWA pilots should consider going on strike to try
2 to get more leverage or bet people's attention?

3 A. I don't recall that specifically. It was mentioned in
4 that article about labor groups taking individual action,
5 maybe even worse than a strike.

6 Q. So do you recall Mr. Hollander -- let me ask the
7 specific question. Do you have any recollection of Mr.
8 Hollander raising the possibility of a strike on April 1 or
9 April 2?

10 A. I don't have any recollection of that.

11 Q. Pardon me for a second? Do you recall when we took your
12 dep deposition at my office back on April 29 of this year?

13 A. Yes.

14 Q. I am sorry.

15 MR. FRAM: Your Honor, I didn't bring copies.

16 MR. PRESS: Impeaching his own witness.

17 MR. FRAM: I am refreshing his recollection, your
18 Honor. I am going to show counsel.

19 I want to show him this.

20 THE COURT: It is his deposition?

21 MR. FRAM: Yes, your Honor.

22 Q. Mr. Singer, I want you to read to yourself on page 115,
23 line 20, the question down to about the middle and see if
24 that refreshes your memory about potential discussions of a
25 strike.

Singer-direct/Fram

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1 A. It refreshes my recollection that there might have been
2 isolated discussion of it and there may have been some rumors
3 but nothing specific and nothing that I remember
4 specifically.

5 Q. Do you recall what your reaction to the possibility of a
6 strike was, whether you thought it was a good idea or a bad
7 idea?

8 A. I thought it was a very bad idea. I knew that the
9 flight attendants had gone on strike about the time of the
10 merger between TWA and Ozark and that there was a lot of bad
11 feeling even in 2001 from something that happened I guess 15
12 years earlier.

13 Q. Let me just ask you some questions about the atmosphere
14 of the meetings on April 1 and April 2. Do you recall any of
15 advisors telling the members of the MEC that they had to vote
16 in a particular way?

17 A. No.

18 Q. Do you recall any of advisors threatening any of the
19 members of the MEC?

20 A. Certainly not.

21 Q. Do you recall any of advisors yelling or screaming at
22 anybody at the meetings?

23 A. No. It was very civil.

24 Q. Do you recall any of advisors cutting off discussion,
25 saying we can't talk about these issues any more?

Exhibit K

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 14
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 30, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD

17 BY: NICOLE M. ACCHIONE, ESQ.

18 AND: LISA J. RODRIGUEZ, ESQ.

19 AND

20 GREEN JACOBSON, P.C.

21 BY: ALLEN PRESS, ESQ. (MO. BAR)

22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)

23 For the Plaintiffs.

24 ARCHER GREINER

25 BY: STEVEN FRAM, ESQ.

AND

KATZ & RANZMAN

BY: DANIEL M. KATZ, ESQ.

FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.

IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
18 OFFICIAL COURT REPORTER
19 UNITED STATES DISTRICT COURT
20 P.O. BOX 6822
21 LAWRENCEVILLE, NJ 08648.
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23
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Holtzman-direct/Fram

101

1 CC?

2 THE WITNESS: Yes.

3 THE COURT: I will allow this.

4 A. The document has a guarantee of a number of captain's
5 positions for the St. Louis cell.

6 The proposal that was on the table had a floor, I
7 think I described earlier, of 25 percent of the combined --
8 there could be no decrease in flying greater than 25 percent
9 of the combined domiciles of Chicago, Dallas and St. Louis.
10 And that is viewed as more favorable than what was agreed to
11 by APA and American and Supplement CC.

12 Q. Are those the importance ways in which you recall
13 Supplement CC was less favorable than the deal that had been
14 on the table?

15 A. Yes.

16 THE COURT: In terms of the number of pilots
17 stapled, though, that didn't change.

18 A. That did not change.

19 Q. Throughout, and by the way, the advice that you gave to
20 the merger committee and the MEC that they should accept this
21 proposal and not have something in code. That advice was
22 rejected, yes?

23 A. That's right.

24 Q. Throughout the course of 2001 when you were advising the
25 TWA MEC, did anybody from ALPA National tell you what advisor

Holtzman-direct/Fram

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1 direction to give to the TWA MEC?

2 A. No, no one did that.

3 Q. Were you aware as of late 2000 that ALPA had adopted the
4 so-called unity resolution, and had expressed an interest in
5 bringing some independent pilot unions into ALPA?

6 A. I wasn't really aware of the resolution. I was aware
7 that there was an interest in organizing the independent
8 union.

9 Q. Were you aware as of late 2000 that there was an
10 interest on the part of ALPA National in trying to bring the
11 American pilots back?

12 A. Yes.

13 Q. Did that interest, that interest the part of ALPA
14 National, did that in any way, shape or form affect the
15 advice or guidance that you gave to the TWA MEC?

16 A. No, it didn't affect my advice.

17 MR. FRAM: I have nothing further on direct.

18 Thank you, your Honor.

19 THE COURT: We will take a 15-minute break now.

20 Then we will resume with cross. Mr. Jacobson, you
21 are going to do the cross?

22 MR. JACOBSON: Yes.

23 THE COURT: We will pick up with your cross
24 examination at 10 of 12.

25 All rise when the jury leaves.

Exhibit L

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
CIVIL 02-2917 (JEI)

3 PATRICK BRADY, SALLY YOUNG,
4 HOWARD HOLLANDER, THEODORE CASE,
5 AND MICHAEL FINUCAN, individually
and on behalf of all others
similarly situated,
Plaintiffs,

6
7 V.

VOLUME 15
TRIAL TRANSCRIPT

8 AIR LINE PILOTS ASSOCIATION,
9
10 Defendant.

CAMDEN, NEW JERSEY
JULY 5, 2011

11 B E F O R E: HONORABLE JOSEPH E. IRENAS
12 UNITED STATES DISTRICT JUDGE

13 A P P E A R A N C E S:

14 TRUJILLO, RODRIGUEZ & RICHARD
BY: NICOLE M. ACCHIONE, ESQ.
15 AND: LISA J. RODRIGUEZ, ESQ.
AND

16 GREEN JACOBSON, P.C.
BY: ALLEN PRESS, ESQ. (MO. BAR)
17 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
For the Plaintiffs.

18 ARCHER GREINER
BY: STEVEN FRAM, ESQ.

19 AND
KATZ & RANZMAN
20 BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

21 ELIZABETH GINSBURG, ESQ.
22 IN-HOUSE COUNSEL FOR ALPA.
23
24
25

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2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

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6 Lynne Johnson, CSR, CM, CRR
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18 LYNNE JOHNSON, CSR, CM, CRR
19 OFFICIAL COURT REPORTER
20 UNITED STATES DISTRICT COURT
21 P.O. BOX 6822
22 LAWRENCEVILLE, NJ 08648.
23
24
25

1 think.

2 Q. Was there any motion by anybody at the MEC level, any
3 resolution offered, a motion made to send this new CBA out
4 for ratification by the members?

5 A. No.

6 Q. Focusing on the advice you gave and the things you did
7 on April 2, 2001, did anybody at ALPA National tell you what
8 advice to give or what guidance to provide to members of the
9 MEC?

10 A. Absolutely not.

11 Q. Were you aware during the period before April 2, 2001,
12 that ALPA National had adopted the so-called unity resolution
13 in late 2000?

14 A. Yes.

15 Q. And just remind us what was the unity resolution?

16 A. It was, it directed the president to go out and try to
17 start discussions with other independent pilot groups to see
18 about merging into ALPA.

19 Q. And one of the pilot, independent pilot groups that was
20 talked about as part of the unity resolution was the Allied
21 Pilots Association?

22 A. Yes, it was.

23 THE COURT: Well, it wasn't just one of them, it
24 was probably one of the most important ones, wasn't it, in
25 terms of the size and nature --

Warner-direct/Fram

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1 A. There were four. Fed Ex, Continental pilots, American
2 pilots and the UPS pilots. So yeah, there were four of
3 consequence and that was one of them.

4 Q. The fact that ALPA had this, and tried to bring the
5 American pilots into ALPA, did that in any way shape or form
6 influence the advice you provided to the TWA MEC?

7 A. Absolutely not.

8 Q. Did there come a point over the summer of 2001 when you
9 were asked to assess or analyze additional litigation
10 theories that were proposed by Roland Wilder?

11 A. Yes.

12 Q. Let's walk through those. Do you have in front of you,
13 if you flip along the pile, skipping a bunch of documents to
14 move this along. July 2, 2001, J 127 in evidence. Your
15 Honor. Do you have that in front of you, Mr. Warner?

16 A. Yes, I do.

17 Q. Is this a legal memorandum from Mr. Wilder's office that
18 came to your attention?

19 A. Yes.

20 Q. What, if anything, were you asked to do in terms of
21 assessing it?

22 A. Well, I was asked to assess it. Exactly that. What had
23 preceded this is I had gone to Roland's office in June before
24 this was done with another lawyer in the legal department to
25 discuss and brainstorm over some legal ideas that Roland had.

Exhibit M

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

3 PATRICK BRADY, SALLY YOUNG,
4 HOWARD HOLLANDER, THEODORE CASE,
5 AND MICHAEL FINUCAN, individually
6 and on behalf of all others
7 similarly situated,
8 Plaintiffs,

9 V.

VOLUME 16
TRIAL TRANSCRIPT

7 AIR LINE PILOTS ASSOCIATION,
8
9 Defendant.

CAMDEN, NEW JERSEY
JULY 6, 2011

11 B E F O R E: HONORABLE JOSEPH E. IRENAS
12 UNITED STATES DISTRICT JUDGE

13 A P P E A R A N C E S:

14 TRUJILLO, RODRIGUEZ & RICHARD
15 BY: NICOLE M. ACCHIONE, ESQ.
16 AND: LISA J. RODRIGUEZ, ESQ.
17 AND

18 GREEN JACOBSON, P.C.
19 BY: ALLEN PRESS, ESQ. (MO. BAR)
20 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
21 For the Plaintiffs.

22 ARCHER GREINER
23 BY: STEVEN FRAM, ESQ.

24 AND
25 KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
18 OFFICIAL COURT REPORTER
19 UNITED STATES DISTRICT COURT
20 P.O. BOX 6822
21 LAWRENCEVILLE, NJ 08648.
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24
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Rosen-direct/Fram

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1 Q. Was there ever an organizing effort where the other
2 pilot group was represented by independent independent unions
3 and ALPA tried to use a card campaign?

4 A. Not that I remember.

5 Q. Let me just focus you on late 2000. Do you recall when
6 ALPA adopted the so-called unity resolution?

7 A. Yes, I do.

8 Q. Tell the jury your understanding of what the unity
9 resolution was?

10 A. Once Duane came, Captain Woerth, came into office, we
11 initiated a strategy of, and a plan to expand membership and
12 we had some expressions of interest from some of the large
13 independent unions.

14 So by 2000, actually we started talking to
15 continental in I think 1999, maybe even 1998, but by 2000 it
16 was clear that we needed to really expand this and make this
17 more public, and so we came out with this unity resolution
18 which really said that we wanted to organize, go out, meet
19 and talk and in a collaborative way with independents,
20 bringing them into ALPA, and as soon and as much as possible.

21 Q. When that resolution was adopted were there particular
22 pilot groups other than continental that ALPA's leadership
23 had in mind?

24 A. Yes.

25 Q. Trying to bring into ALPA?

Rosen-direct/Fram

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1 we bring to the table in terms of representing pilots and
2 their interests plus they saw the advantage of being under
3 the ALPA merger policy so that in the event they would be
4 merged in the future with another ALPA carrier they would be
5 covered by the ALPA merger policy.

6 Q. You mentioned that a joint committee of some type was
7 formed between Continental's union and ALPA to pursue merger
8 discussions?

9 A. Yes.

10 Q. What happened next in terms of the effort to bring the
11 Continental pilots into ALPA?

12 A. The next thing that happened was we agreed upon a merger
13 agreement to merge the two in terms of all the business
14 points you would deal with, staff, money, things like that.
15 And an orderly transition. That was the next step. After
16 that we then had to start going out and holding a vote within
17 Continental pilot group.

18 Q. What did that involve?

19 A. Well, that involved a huge undertaking, a lot of pilots,
20 we had office's at all their domiciles. We would go to crew
21 rooms. We had as I said other 50 pilot volunteers who would
22 go around and talk to pilots. We had a huge amount of staff
23 support to handle this undertaking because it was very
24 complicated and we had lawyers assigned because there were
25 legal issues. Communications people assigned. It was a full

Rosen-direct/Fram

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1 undertaking.

2 Q. The leadership of the Continental pilots union had
3 agreed to merge, why was there any need to go and talk to the
4 individual pilots?

5 MR. PRESS: Judge, I object to the relevance of
6 this. You don't know why we are talking about the
7 Continental pilots.

8 THE COURT: Yeah, I am beginning to --

9 MR. FRAM: If you want me to explain, your Honor, I
10 am happy to. We are talking about what you do to organize
11 pilots and we are going to compare it to what never happened
12 at American. None of this happened at American.

13 THE COURT: You are wrong. That is a misstatement
14 of facts. There were cards out there. Those cards didn't
15 come from the Tooth Fairy. Those cards were being collected.
16 They were handed over to ALPA. Your statement that none of
17 this happened in American is not a true statement.

18 MR. FRAM: Sorry, your Honor. None of this was
19 done by ALPA. ALPA did not organize other unions as
20 explained by the witness.

21 THE COURT: That is unclear. That is your take. I
22 am not sure the evidence doesn't support another inference on
23 that.

24 MR. FRAM: Your Honor, I respectfully disagree with
25 that.

Rosen-direct/Fram

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1 THE COURT: The jury will decide that. That is
2 what we have them here for.

3 MR. PRESS: Your Honor, I believe Mr. Fram's
4 statement to this jury but heard by this jury opened the door
5 to what happened after April 3rd, 2002.

6 THE COURT: Let's leave that for another day.

7 I think the jury has the drift of what you are
8 saying. I don't think we need an explanation for why there
9 has to be a big campaign to generate votes among the pilot
10 groups itself in a merger.

11 Q. Did ALPA in any way shape or form initiate a card
12 campaign at American Airlines?

13 A. No, they did not.

14 THE COURT: In the card campaign, where do the
15 cards come from?

16 A. In a card campaign we generate the cards.

17 THE COURT: That's right.

18 A. We print cards. When we do our own card campaign we
19 print the cards and distribute the cards.

20 THE COURT: You are aware there was a card campaign
21 going on in a limited sense with American.

22 A. I am aware.

23 THE COURT: You are aware those cards were
24 delivered, in fact, to ALPA.

25 A. Yes.

Rosen-direct/Fram

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1 THE COURT: Those cards then disappeared later on,
2 the physical cards. You know that as well.

3 THE WITNESS: Yes, that was in my deposition.

4 THE COURT: You don't know what happened.

5 THE COURT: That's correct.

6 THE COURT: Do you know who printed the cards?

7 A. No, I don't know.

8 THE COURT: You don't know whether it was American
9 that printed the cards and provided them to Hunnibell and
10 Clark, the American pilots or they somehow or other got out
11 and got cards of their hone.

12 A. They could have done that.

13 THE COURT: They could have done that but you
14 don't know.

15 A. I am not aware of providing any cards to them.

16 THE COURT: You can't say, you don't simply know.
17 You are not even aware of where the cards are, that might
18 tell us, if we had the cards we might know who prepared them,
19 wouldn't we? If we physically had the cards.

20 A. I am not sure.

21 THE COURT: Maybe. It might give us a clue who the
22 printer was, was a printer used by --

23 A. I understand what you are saying, but I am am not sure.

24 THE COURT: There is a lot of things we could do if
25 we had the cards.

Rosen-direct/Fram

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1 A. I understand what you are saying.

2 THE COURT: Go ahead.

3 Q. Mr. Rosen, did ALPA printed cards that were used to
4 distribute to the American pilots?

5 A. No, I am not aware --

6 THE COURT: No, no. Don't say no. You don't know,
7 do you, where the cards came from? You don't know where the
8 cards came from.

9 A. I don't know where they came from.

10 THE COURT: And you don't know where they are so we
11 can't do any forensics on them to figure it out, right? Is
12 that correct?

13 THE WITNESS: Yes.

14 THE COURT: Don't try to get him to say that he
15 knows American didn't distribute them. He is not aware that
16 they did, but he doesn't know where they got the cards. I
17 you don't know where Clark and Hunnibell got the cards.

18 A. All I know.

19 MR. FRAM: We have testimony that --

20 THE COURT: He doesn't know. What other witnesses
21 say is one thing. He doesn't know.

22 Q. Mr. Rosen, did you direct anybody to print cards?

23 A. No.

24 Q. To send to the American Airline pilots?

25 A. No.

Rosen-direct/Fram

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1 Q. Has anybody at ALPA ever told that you they printed
2 cards to send to American?

3 A. No. No one of told me that.

4 Q. Was any money ever budgeted by ALPA in 2001 to try to
5 organize the American pilots?

6 MR. PRESS: He is leading the witness.

7 THE COURT: Yeah, you are leading him. By the way,
8 did ALPA ever indicate to Hunnibell and Clark that they would
9 reimburse them for expenses they incurred in their card
10 campaign.

11 THE WITNESS: Did ALPA?

12 THE COURT: Did ALPA ever indicate on ALPA
13 letterhead or ALPA, from ALPA official to say Clark and
14 Hunnibell that they would reimburse them for their expenses.

15 A. I am not aware of any --

16 THE COURT: You are not aware?

17 THE WITNESS: No.

18 THE COURT: So if somebody showed you a memo or a,
19 or something that said otherwise, you would be surprised.

20 A. Yes, because I know --

21 THE COURT: No, no, you didn't know. You would be
22 surprised if such a document were shown.

23 A. Why surprised?

24 THE COURT: Well, because you are not aware of it.
25 So you would be surprised if somebody showed you an ALPA memo

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1 and an ALPA documents that promised to reimburse. You
2 indicator indicated there would are reimbursement.

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Okay. Next.

5 Q. To your knowledge did ALPA ever actually reimburse any
6 expenses to Clark or Hunnibell?

7 A. No, they did not.

8 Q. Let's wrap up with the Continental campaign. I think
9 you told us about some of the, have you told us about the
10 resources that ALPA devoted to trying to pursue the merger
11 with Continental?

12 A. I think I did. I explained that we had two assistant
13 directors, we had a whole bunch of people from
14 communications, legal department, a lot of pilot volunteers,
15 a lot of interim political officers who were assisting in the
16 campaign. Very widespread support.

17 Q. And what cost, can you tell us how much money ALPA
18 incurred during the course of trying to organize or merge
19 with the Continental pilots?

20 MR. PRESS: Again, Judge, relevance.

21 THE COURT: Are you objecting?

22 MR. PRESS: Yes.

23 THE COURT: Say I object.

24 MR. PRESS: I object.

25 THE COURT: Sustained.

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1 engage in a jumpseat war with American?

2 A. I think as I explained in the deposition, it is an
3 apolitical policy. We do not, and it is based on reciprocity
4 and the overall negative impact on everyone would far
5 outweigh any advantage or anything that would be gained by
6 doing that in some kind of retaliatory fashion, and I thought
7 it would make things worse, would be my reevaluation.

8 Q. That policy is just a guideline, it is not a hard and
9 fast rule?

10 A. That is the guideline we followed but it is not
11 mandatory.

12 Q. In fact, Mr. Rosen, you know from your experience at
13 ALPA that ALPA has in fact used the jumpseat to punish pilots
14 it was upset with?

15 A. I am not aware of that.

16 Q. You are not aware of that?

17 A. No.

18 Q. Aren't you aware that the Eastern pilots went on strike
19 in 1989 for about a year?

20 A. I am aware of that.

21 MR. FRAM: I object. That is before the policy.
22 This is misleading.

23 THE COURT: I will allow it. Go ahead. What is
24 your next question?

25 Q. You are aware that there were some Eastern pilots that

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1 crossed the picket line, they were referred to as scabs,
2 right?

3 A. That's correct.

4 Q. You are aware that these scabs in fact were precluded
5 from ALPA jumpseats?

6 A. I am aware of that.

7 Q. Right. And you are aware that in fact there was a list
8 of all these scabs that ALPA produced and distributed to all
9 of its members, right?

10 A. No, I am not aware of that.

11 Q. You are not aware of that?

12 A. No.

13 Q. Aren't you aware there was a lawsuit over that and you
14 provided testimony, I think?

15 A. Yeah, that we didn't have a list.

16 Q. You didn't have a list?

17 A. We did not have the list. That was the testimony.

18 Q. Isn't it true, Mr. Rosen, that in 1991 ALPA produced and
19 distributed 50,000 copies of the scabs list, the final
20 publication was entitled the scabs of Eastern, of the strike
21 of 89. Aren't you aware of that?

22 A. I don't remember.

23 Q. Can I show you?

24 A. Sorry.

25 Q. I want to show you.

Rosen-cross/Press

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1 MR. FRAM: Your Honor, I object under 403.

2 THE COURT: No, I will allow it.

3 MR. FRAM: Can I see you at sidebar?

4 THE COURT: I am going to allow it. The jumpseat
5 issue is clearly in the case. I will allow it. Go ahead.

6 Q. I am going to hand you something that I want you to look
7 at, first of all, what is it, are you familiar with this?

8 MR. FRAM: May I have a copy?

9 MR. PRESS: I am sorry.

10 THE COURT: What is it marked?

11 MR. PRESS: It is not marked, Judge. It is just, I
12 am just using it to refresh memory for now.

13 A. I what are you pointing me to? I apologize --

14 Q. Have you ever seen this case I have landed you?

15 A. Yes.

16 Q. Oh. This is a published opinion of --

17 A. I said yes.

18 Q. Dun versus ALPA?

19 A. Yes.

20 Q. You are familiar with in lawsuit, right?

21 A. Goes back a long time. I don't recalling it. I would
22 have to read it, your Honor.

23 THE COURT: Well, if you want to read it, I am
24 certainly going to ask him to ask questions on it.

25 MR. PRESS: I don't want to sit and have you read

Rosen-cross/Press

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1 in front of the jury.

2 THE COURT: If you want to know about the list,
3 forget -- just stick with what he knows about the list.

4 Q. You are denying that ALPA produced and distributed a
5 scab list?

6 A. No, you have refreshed my recollection. I would like an
7 opportunity to review it, and I appreciate your refreshing
8 it. I apologize if I gave incorrect information on that.

9 THE COURT: Okay. Your recollection is refreshed.

10 Q. In this is refresh refreshing your memory in fact ALPA
11 did produce and distribute a scab list?

12 A. If that is what it says, that is what it says. That is
13 why I wanted to review it.

14 THE COURT: Let him look at it.

15 Q. Please --

16 THE COURT: Go ahead and a look at it.

17 Q. I show you --

18 THE COURT: Let him look at it.

19 MR. PRESS: I am sorry, Judge.

20 (Pause)

21 A. I see the paragraph you highlighted which clearly states
22 in 1991 ALPA produced and distributed 50,000 copies of the
23 scab list. This final publication was entitled the scabs of
24 Eastern, of the strike of '89.

25 THE COURT: The question is do you recall that

1 now?

2 A. I do recall it now.

3 THE COURT: Okay.

4 Q. So as a matter of fact, ALPA did produce and distribute
5 a scabs list of these Eastern pilots, right?

6 A. I think you asked me that. Yes.

7 Q. And part of the intention of doing that was for that
8 list to be taken into cock pits by ALPA pilots so they on on
9 would know who the scabs were that might want to sit in the
10 jumpseat. That was part of the reason?

11 A. I can't speak to the intent.

12 Q. That is fair enough.

13 Q. Following up on some of the judge's questions about Mr.
14 Rindfleisch. You were aware at the time, this is 2001, on
15 '02, that he was communicating directly with American pilots
16 about rejoining ALPA?

17 A. He was communicating with American pilots. Who were
18 expressing an interest in ALPA.

19 Q. And two in particular had undertaken this card campaign,
20 Mr. Hunnibell and Mr. Clark, right?

21 A. Yes.

22 Q. You know for a fact Mr. Rindfleisch had regular
23 communication with those two men.

24 A. There was frequent emails exchanged between the three of
25 them.

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1 serious and prejudicial and if your Honor is concerned about
2 anything I say, that might suggest that, I request that you
3 call counsel to sidebar. I really do.

4 THE COURT: Okay.

5 MR. FRAM: I am very upset about the Court's
6 comments on the record in front of the jury so.

7 THE COURT: All right.

8 MR. FRAM: I request that you not do that again,
9 please.

10 THE COURT: All right. I am going to give this
11 charge, this instruction. When the jury comes in.

12 MR. FRAM: Thank you, your Honor.

13 (Jury enters the courtroom (.)

14 THE COURT: Everyone please be seated.

15 Ladies and gentlemen, I want to give you an
16 instruction that relates to an interchange that took place
17 earlier in the day.

18 During the examination of Mr. Rosen I made a
19 comment to the effect that Mr. Fram had made an inaccurate
20 factual statement.

21 I instruct you to disregard that comment. Certain
22 of the facts in this case are disputed by the parties, and my
23 comment referred to those disputed facts. It is your role as
24 the jury to decide disputed facts. Your role and your role
25 alone.

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1 a pilot representative or two, and so I do remember talking
2 to people at ALPA about that, did they have a recommendation
3 on who might be a good retiree to serve on the committee.
4 But other than that, and sort of reporting that the motion
5 had been made, ALPA didn't -- none of the unions I think
6 represented there, retirees for those purposes, so it wasn't
7 that.

8 Q. Did you give some kind of presentation at the meeting on
9 March 21 and 22 of 2001 about Section 1113, the likelihood of
10 it being granted and related issues?

11 A. Yes.

12 Q. As of March 21 and 22, did you have an understanding
13 about when the motion would be heard by the Judge, by Judge
14 Walsh and when ALPA would be required to file any responsive
15 papers?

16 A. Yes.

17 Q. What was your understanding of when the motion was going
18 to be heard by Judge Walsh are?

19 A. I believe when the motion was filed, in fact, if I can
20 look at it for a second, it had down, hearing on the first
21 page, it had hearing date to be determined. Objection date,
22 March 26.

23 So when it was filed we actually didn't know what
24 day it was going to be heard.

25 I believe right around the 21st, it may have been

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1 the 21st, TWA filed an amended motion stating that the
2 hearing would be held on April 6, and that objections would
3 be due March 30 instead of March 26.

4 Q. Okay.

5 A. And I believe I reported at that meeting that at some
6 point during that meeting.

7 Q. When you reported to the MEC -- by the way, just tell us
8 generally who was present at the meetings on March 21 and 22,
9 2001?

10 A. It was an MEC meeting. There were a series of these
11 meetings. Members of the MEC would be there and the officers
12 and the chairs at least of the negotiating and merger
13 committees, and the creditors committee representatives, and
14 David Holtzman and me and Steve Tumblin and Michael Glanzer,
15 and I think at most of these meetings, if not all of them,
16 Clay Warner.

17 Q. Did you talk at the meeting on March 21 and 22 about
18 whether the hearing date could be postponed, whether there is
19 a way to get the motion to be considered to be put off?

20 A. I believe I did.

21 Q. What did he say?

22 A. The statute, this is a very unusual statute. The
23 statute says that when the motion is filed, the hearing, the
24 Court will schedule the hearing no later than two weeks after
25 the motion is filed. And the Court, for, it says something

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1 like special circumstances or the circumstances of the case,
2 can extend it one week, and that is all. The hearing has to
3 start 21 days after the motion is filed. No later than that.
4 Unless the company agrees.

5 As I remember, April 6 was 21 days, maybe it was 20
6 days, but it was 21 days after March 15. So that unless the
7 company agreed, the hearing was going on start on April 6.
8 The statute instructed the Judge not to extend the start of
9 the hearing unless the company agreed.

10 Q. Did you have a sense on March 21 or 22 of how long the
11 hearing would take?

12 A. Yes. I had a general sense.

13 Q. Did you talk to the people at the meeting about how long
14 you thought the hearing would take?

15 A. At both this meeting and the meeting on, the last
16 meeting which was April 1, 2, my -- and we were focusing at
17 this point more on getting the objection done and filed.
18 That was the first thing we needed to do. But that -- from
19 everything I knew in the negotiations, everything was
20 focusing now on scope and successorship. And seniority
21 integration. I sort of mean that too.

22 And so my view, I think I expressed at this point,
23 I know I expressed at the next meeting, was that we would
24 need a witness, the negotiating history was going to be
25 agreed to, I thought, what is in the contract is going to be

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1 My conclusion from that is that the Judge was
2 reaching out to make some comments about the 1113
3 proceedings, even before they were scheduled to start.

4 Q. So was the 1113 application, was it even before Judge
5 Walsh as part of the motions he was deciding?

6 A. No. I think there were some objections by some Israeli
7 employees, or Israeli employees --

8 THE COURT: Of whom?

9 THE WITNESS: Of TWA, and I think the Israeli
10 operations were going to be closed and they were raising
11 objections, but what struck me was that this was very general
12 language that the Judge used about the 1113 process.

13 Q. Mr. Seltzer, did you know during the timeframe that we
14 were discussing, early 2001, that the prior year late 2000,
15 ALPA had adopted the so-called unity resolution?

16 A. No.

17 Q. Did anybody tell you during the period which you were
18 representing the MEC and ALPA during the bankruptcy
19 proceeding that ALPA had a long term goal of trying to bring
20 the American pilots back to ALPA?

21 A. No.

22 Q. Did anybody tell you what advice you should give to the
23 TWA MEC or the TWA pilots?

24 A. Absolutely not.

25 Q. Did anyone try to influence the advice that you give to

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1 TWA pilots or the TWA MEC?

2 A. Absolutely not.

3 MR. FRAM: Thank you thank you. I have nothing
4 further on direct.

5 THE COURT: Cross examine.

6 MR. JACOBSON: Thank you, your Honor.

7 CROSS EXAMINATION.

8 BY MR. JACOBSON:

9 Q. Mr. Seltzer, I would like to ask you a few more
10 questions about your background first before I get into the
11 meat of the cross examination. Okay, sir?

12 A. Absolutely.

13 Q. You are a lawyer at what law firm?

14 A. Cohen, Weiss & Simon.

15 Q. Cohen, Weiss and Simon represented ALPA since when?

16 A. I think since the 1930s.

17 Q. You or your law firm have been their general counsel
18 since then, correct?

19 A. I think since then. At some point we became general
20 counsel. We have been general counsel for a long time.

21 Q. For a long time and still are today?

22 A. Yes.

23 Q. All right. And let's go to the bankruptcy. You had
24 mentioned that you thought the debtor in possession financing
25 was unusual because the financing was by American Airlines

Exhibit N

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 17
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JULY 7, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND

20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.

AND
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1 MR. PRESS: The last paragraph of instruction 15
2 has a reference to not filing grievances.

3 THE COURT: Say again.

4 MR. PRESS: There is a reference to not providing
5 represented employees proper forms for grievances.

6 THE COURT: Where?

7 MR. PRESS: Last paragraph.

8 THE COURT: 16.

9 MR. PRESS: Of 15.

10 THE COURT: 15, I am sorry.

11 MR. PRESS: First sentence talking about grievance
12 forms, Judge. I didn't know what that was about.

13 THE COURT: I agree. That is far from relevant in
14 this case.

15 MR. PRESS: I would suggest putting a period after
16 the word "manner" and deleting the rest of that.

17 MR. FRAM: No objection to that, your Honor.

18 THE COURT: I don't see why anybody would want
19 that.

20 Probably move that sentence up as part of the
21 previous paragraph. In other words, put a period after
22 "manner," then move that truncated sentence as part of the
23 previous paragraph.

24 Okay. 16.

25 MR. FRAM: Your Honor, the beginning of 15, we

1 think it is important to quote from language from Lockridge
2 that we had in our proposed charge on charges 14 C, in the
3 language would be, also some language from Deboles, your
4 Honor, it would be to the effect that to establish bad faith
5 plaintiffs have the burden of presenting affirmative
6 substantial evidence of fraud, deceitful action or dishonest
7 conduct.

8 A showing of fraud, deceitful action, or dishonest
9 conduct would prove -- requires proof of all of the following
10 elements. We have the four elements on page 29 of our
11 proposed charge that come from Deboles. A misleading
12 statement or material omission in reliance, injury and
13 wrongful intent. We didn't believe that those concepts, your
14 Honor, are sufficiently --

15 THE COURT: I have your language right here.

16 MR. FRAM: Thank you.

17 THE COURT: It goes on.

18 MR. FRAM: I think it is just the one paragraph I
19 am focused on.

20 THE COURT: You have to establish bad faith, the
21 plaintiffs have the burden of burden of establishing fraud.
22 Deceitful action, dishonest conduct. Showing of fraud,
23 deceitful action, requires proof of all the following
24 elements.

25 MR. FRAM: Exactly, your Honor.

1 THE COURT: You rise.

2 MR. PRESS: It is an incomplete statement of the
3 law, is our primary objection, Judge. You have given
4 examples of what bad faith are, and their proposed
5 instruction would exclude some of those things. It is an
6 incomplete statement of what may constitute bad faith.

7 THE COURT: I mean I am sure in the context of the
8 way some duty of fair representation cases have arisen, fraud
9 is a meaningful concept. But it is not too meaningful in the
10 way this case has arisen. I know you would like to shoehorn
11 this into a fraud case. But I am not sure, if it was a true
12 fraud case for one thing the burden of proof is different.
13 In a fraud case the burden of proof is clear and convincing,
14 not by a preponderance to start with.

15 MR. FRAM: Your Honor, we researched that issue.
16 Under state law that is the case. Under federal law it is
17 not. We hoped to argue that. Under the DFR law, even fraud
18 cases like Deboles are subject to the preponderance standard.
19 I think it is clear that major aspects of this case are fraud
20 cases, just like Deboles.

21 THE COURT: In many cases they are fraud cases, in
22 the way they come down. But in a conflict of interest
23 situation, hard to shoehorn that into, I mean you put it
24 anywhere you want, the core of the plaintiff's case in this
25 case, is that they had a conflict. And because they had a

1 conflict, they breached, their actions were inconsistent with
2 the duty of fair representation.

3 That is very simple terms. Their case. That
4 doesn't fit well into the fraud paradigm. I mean.

5 MR. FRAM: Your Honor, could I be heard on that?

6 THE COURT: Yes.

7 MR. FRAM: I think there is an important
8 distinction. They point to the conflict as evidence of bad
9 faith, but they still have to prove that there was, they
10 still have to prove that there was substantial evidence of
11 fraud and deceitful action, dishonest conduct, reliance on
12 the other elements. And if they don't prove the other
13 elements, then the fact that there was a conflict becomes
14 meaningless. I think the Deboles case really punctuates that
15 point. They are separate elements, your Honor, and I think
16 to the extent they are pushing a theory that, well, the
17 breach here was having a conflict, but failing to disclose
18 it, that goes nowhere.

19 There has to be action, or inaction, or some other
20 conduct, that harms the plaintiffs. You can't have a
21 conflict that sits out in the vacuum, that does not result in
22 some action or inaction upon the plaintiffs. That is why we
23 think the language here is so essential, and again, I am
24 taking it from O'Neill and from Deboles, I would submit, your
25 Honor, this case is just like Deboles, where the plaintiffs

1 are claiming that --

2 THE COURT: Deboles?

3 MR. FRAM: Deboles, we cited Deboles v. TWA, the
4 Third Circuit cases, your Honor may recall, it was written by
5 Judge Gerry sitting by designation some years ago. I think.

6 THE COURT: It was some years ago, yes.

7 MR. FRAM: I think it was '76. If the theory here,
8 your Honor, is that the fact of the conflict goes anywhere, I
9 just don't get it.

10 We have already, your Honor mentioned this morning
11 and you are absolutely right, that it was entirely lawful and
12 not improper for Duane Woerth to go in and talk to the APA in
13 the fall of 2000. One of the things we request is that you
14 instruct the jury to that effect.

15 THE COURT: Let me ask you this. Let's assume the
16 company has a conflict. The one we have here in this case.
17 Alleged.

18 MR. FRAM: Yes, your Honor.

19 THE COURT: And the union in effect doesn't use its
20 best efforts to represent their members because of this
21 conflict. You are saying because the jury might have trouble
22 finding a misleading statement or representation the case
23 fails?

24 MR. FRAM: No. What we are saying, your Honor, is
25 two things. One, we are saying that --

1 THE COURT: You make it look like a false or
2 misleading statement is the heart of the case.

3 MR. FRAM: Your Honor.

4 THE COURT: That is not really the heart of this
5 case.

6 MR. FRAM: Your Honor, I think it is, but to the
7 extent it is part of this case, we believe it is essential to
8 have that language so that they can evaluate that part of the
9 case. We understand that --

10 THE COURT: Why don't, does, if a party has a duty,
11 or it is infected by a desire to receive a benefit from some
12 other group, so it doesn't use its best efforts, because of
13 that conflict, to represent its members, why does there have
14 to be a misrepresentation?

15 MR. FRAM: Your Honor --

16 THE COURT: What makes their need for a
17 misrepresentation, that particular context.

18 MR. FRAM: First of all, best efforts is not the
19 standard.

20 THE COURT: Well, let's they are influenced by
21 their desire to benefit APA, and they take steps because of
22 that not to -- well, I will for the moment use best efforts,
23 use their best efforts to represent. Specifically because of
24 their desire not to offend the American pilots who they hope
25 to bring into their fold.

1 Why does -- why would I focus on misrepresentation
2 as the heart of that cause of action?

3 MR. FRAM: Your Honor, if we are agreeing that
4 there is no claim of misrepresentation and material --
5 mission in the case I am fine with that.

6 THE COURT: I am saying they are not taking that
7 position. They are not taking the position there is no
8 misrepresentation. I am saying why should I make that the
9 focal point of the bad faith claim.

10 MR. FRAM: This goes back to my suggestion before
11 that you be more specific in terms of the types of claims and
12 say some of the claims that certified the plaintiffs here is
13 there were omissions and misrepresentation, and those claims
14 are subject to this standard. Other claims are based upon
15 the alleged failure of ALPA to, I don't want to agree with
16 you about best efforts, I think it is a concept that is not
17 recognized.

18 THE COURT: I agree.

19 MR. FRAM: It is highly deferential. Other claims
20 of the plaintiff.

21 THE COURT: I say here the fact a union is
22 negligent or careless doesn't give you a cause of action.
23 One thing I made very clear that is the intent, there has to
24 be intent. They have to find intent.

25 MR. FRAM: Your Honor, you can certainly instructed

1 that certain of the claims are not based upon
2 misrepresentations or omissions.

3 THE COURT: I think you are trying to parse the
4 claims in little tiny bits that is not really justified.

5 MR. FRAM: We want the jury to be guided clearly in
6 terms of the requirements of the law. I don't think Deboles
7 could be any clearer about the need for misrepresentation,
8 omissions on the conduct, reliance by the plaintiffs. These
9 are basic fraud elements, that are essential to an evaluation
10 of not only the --

11 THE COURT: I don't think the conflict claimed in
12 this case fits very well with the fraud paradigm. I don't
13 think it works.

14 MR. FRAM: The conflict claim is element number 4.
15 That is the proof they have of wrongful intent. Before you
16 get to consideration of whether there was wrongful intent,
17 whether it was meaningful, you first have to prove there was
18 dishonest conduct or some other problem. If ALPA had made
19 correct representations, had been diligent, had done
20 everything it was supposed to do.

21 THE COURT: That, by the way, to some degree, that
22 is the Achilles heel of their case. I don't know what the
23 jury is going to do, I know what I am going to do. On appeal
24 I agree with you they are going to have to prove that they
25 did something that they shouldn't have done.

1 MR. FRAM: It is something they shouldn't have
2 done.

3 THE COURT: What?

4 MR. FRAM: Fraud, deceitful action or dishonest
5 conduct. That is part of their case.

6 THE COURT: All right. I will look at Deboles.

7 MS. RODRIGUEZ: Can I be heard on this?

8 THE COURT: Of course.

9 MS. RODRIGUEZ: This is not the standard. It is
10 not a fraud case. It is --

11 THE COURT: No, I have taken that, indeed, I made
12 changes in the way I originally drafted the charge because I
13 ought at least in this case -- the fraud matrix just doesn't
14 apply.

15 MS. RODRIGUEZ: It does not apply and it is not the
16 law, and as much as I respect Judge Gerry, a 1970 case pre
17 O'Neill by the way is not instructive. And again, I ask --

18 THE COURT: You better respect Judge Gerry.

19 MS. RODRIGUEZ: When I clerked for Judge Cohen,
20 going back, he was sick for a long period of my clerkship so
21 I actually ended up getting switched over to Judge Gerry for
22 that time.

23 THE COURT: I sit in Judge Gerry's old chambers.

24 MS. RODRIGUEZ: I know you do. In Aguinaga, the
25 Court addresses these issues. It says if --

1 THE COURT: In what?

2 MS. RODRIGUEZ: Aguinaga.

3 THE COURT: Spell that.

4 MS. RODRIGUEZ: A G U I N A G A. It is a Second
5 circuit Court of Appeals, 1993.

6 The Court says, if, as the union argues, O'Neill
7 counsels that the union be accorded due deference in its
8 decision to sacrifice plaintiffs' rights, such deference
9 would only be appropriate insofar as the union's motives have
10 been proper, i.e., to gain advantage with Morrell embarking
11 over other plants. Here, however, plaintiffs presented
12 evidence that the union had other motives in sacrificing
13 plaintiffs' rights and concealing its activities. The record
14 contains evidence that tended to show that the union was
15 motivated in part by its desire to obtain status as the
16 bargaining representative for three reopened plants. As
17 neither of these motives are proper for a union which had the
18 duty to its members akin to the duty owed by other
19 fiduciaries to their beneficiaries, we hold that there is
20 evidence upon which the jury could probably find that the
21 union breached its duty of fair representation.

22 There is no talk about a four-part test and parsing
23 here and parsing there. It is one duty of fair
24 representation.

25 THE COURT: I told you I already made changes in

1 this. I actually had some fraud stuff in an earlier draft of
2 this. See draft number 2. Draft number 1 actually had some
3 fraud language in it which I took out. And I took it out
4 because I didn't believe that this case, you know, fit well
5 within that paradigm, within that framework. I will reread
6 these cases.

7 MR. KATZ: Your Honor, we cited in many of the
8 briefs that have been filed a number of cases that followed
9 Deboles, that reaffirmed the principles that were laid out in
10 Deboles, and a few of them that are after, Anderson, Acri,
11 Cell in the Fourth Circuit. These are six or seven different
12 circuit courts of appeal that make clear that Deboles is good
13 law throughout the country. Aguinaga is a very unusual and
14 atypical case --

15 MS. RODRIGUEZ: These are the two cases I cited.

16 MR. KATZ: The point I wanted to make is that there
17 are allegations in this case of misstatements that the
18 plaintiffs are relying upon. And while no one approves or
19 condones the idea of union representatives making
20 misstatements, there are a wide variety of cases that deal
21 with the issue in a duty of fair representation context,
22 including cases where a union representative basically is
23 accused of taking a dive, as the accusations are here, in
24 order to persuade employees to ratify a collective bargaining
25 agreement.

1 And in those cases, the fact that there is a
2 misstatement is far from enough to establish a duty of fair
3 representation violation. And even a bad motive of making a
4 misrepresentation in order to make a deal when it is not in
5 the best interest of the employees is not enough.

6 As Mr. Fram has been pointing out, the cases in all
7 these courts of appeals that I have mentioned that are cited
8 in our motion to decertify the class, in our 1292 (b)
9 application, and even in our summary judgment motion, those
10 cases show that it is vital in order to prove a DFR
11 violation, that --

12 THE COURT: I am going to revisit the issue. I
13 told you.

14 MR. KATZ: All right. I would just suggest that
15 you look at the other briefs that collect some of the cases
16 in other circuits.

17 THE COURT: I am not going to make a change now.
18 But I have your point. I will read it.

19 MR. KATZ: Thank you.

20 MR. PRESS: It dawned on me listening to Mr. Katz
21 the best guidance we have in this case is the Third Circuit's
22 decision in this case. They held that if we prove that the
23 union failed to do anything for an improper purpose, we win,
24 or we can win.

25 MR. FRAM: Your Honor, I have --

1 MR. PRESS: That is black and white. That was the
2 holding.

3 MR. FRAM: Failed to do anything. But what about
4 causation? What about injury in fact? What about Deboles,
5 your Honor, that says that there can be no liability in the
6 absence of injury, because, quote, "any remedy against the
7 union would necessarily be a 'punishment' for a harmless
8 lie."

9 Deboles, as you recall is a case where the District
10 Court found there were affirmative misrepresentations. The
11 Third Circuit reverses. A harmless lie. A lie that wasn't
12 relied upon by the union members, and that didn't result in
13 any harm, is meaningless, there is no DFR violation.

14 THE COURT: I have accepted that principle.

15 MR. FRAM: Thank you.

16 THE COURT: There has to be harm from the wrongful
17 conduct. We have a verdict sheet and we have it in the
18 charge.

19 All right. I will revisit that. We will look at
20 that again. I am not changing paragraphs 16 now.

21 Okay. What about, anything for the rest of it?

22 MR. FRAM: Your Honor, 16, I am looking at the
23 third line.

24 THE COURT: Third line of the first paragraph.

25 MR. FRAM: A phrase, "out of a desire to obtain an

1 undeserved benefit at the expense of the employees it
2 represents, A. We are not certain that there is any law that
3 supports that; B. It doesn't seem to have any application to
4 the case, your Honor. We are concerned it will be confusing.

5 MS. RODRIGUEZ: Where are you?

6 THE COURT: The very first sentence of paragraph
7 16.

8 MR. FRAM: We ask the Court to strike that.

9 (Pause)

10 MR. PRESS: We don't have a problem removing that
11 sentence or clause.

12 THE COURT: He wants the whole sentence removed.

13 MR. PRESS: I forgot where we are.

14 THE COURT: First paragraph, first sentence, first
15 paragraph of 16.

16 MS. RODRIGUEZ: We don't have a problem with it.

17 MR. PRESS: No, not the whole sentence, just the
18 last --

19 THE COURT: I don't know. What is it you asked to
20 be struck?

21 MR. FRAM: Your Honor, we would strike "or out of a
22 desire to obtain an undeserved benefit at the expense of."

23 THE COURT: Do you have an objection to that?

24 MR. PRESS: No.

25 THE COURT: It reads "A union's conduct is made in

1 bad faith when it acts or fails to act out of ill will
2 towards the employees it represents."

3 MR. FRAM: Yes.

4 THE COURT: There is no objection to that change.
5 I will make it.

6 THE COURT: What else?

7 MR. FRAM: Next paragraph, examples of bad faith.
8 Deliberately making misleading statements to employees, not
9 disclosing conflicts of interest, acting with hostility
10 towards union members and ignoring union policies in labor
11 negotiation. We are a little concerned about that language,
12 your Honor.

13 One, not disclosing conflicts of interest. I am
14 not sure, we don't believe the law supports that. Acting
15 with hostility towards union members.

16 Again, I alluded to this testimony, which I think
17 you know my view of it, by Comlish, that when Duane Woerth
18 scowled at him, I am concerned that the jury might think
19 someone might not, that someone allegedly raising their
20 voice, that someone raising their voice is a violation. It
21 doesn't. It has to be meaningful. Or ignoring the policy of
22 the labor negotiation. I don't know that the law supports
23 that.

24 We think the jury is going to be confused, and I
25 don't believe there is any evidence, your Honor, in the case

1 that we ignored, that ALPA ignored union policy. What I
2 would ask your Honor to do is strike that sentence and --

3 THE COURT: That paragraph.

4 MR. FRAM: That paragraph.

5 THE COURT: It is one sentence.

6 MR. FRAM: The one sentence paragraph which I know
7 your Honor disfavors, you said that before. We have a one-
8 sentence paragraph and no page numbers.

9 THE COURT: Bad news.

10 MR. FRAM: That is my reference and let the jury
11 rely upon the more general discussion of the standard.

12 Of course, our concern is by giving specific
13 examples that arguably dovetail with the plaintiff's
14 arguments, that this becomes suggestive to the jury and
15 prejudicial to the defendant.

16 THE COURT: I will wait to see.

17 MR. PRESS: I don't have the cases in my
18 fingertips. I know there is legal support for every
19 submission you included in here. I think this is completely
20 proper.

21 THE COURT: I am going to omit "ignoring union
22 policies and labor negotiations." Because I don't think
23 there is anything in this case --

24 MR. PRESS: There is.

25 THE COURT: Well, tell me what there is.

1 MR. PRESS: ALPA merger policy in an ALPA to non-
2 ALPA case requires the president to take reasonable steps to
3 insure that a fair process is entered into for a fair and
4 equitable integration. There is no evidence Duane Woerth did
5 anything to comply with that policy. All the evidence and
6 inferences would suggest that he didn't do anything. That is
7 policy one.

8 Policy two, we got it yesterday from Seth Rosen,
9 the collective bargaining policy, the concessionary
10 negotiation requires that those negotiations be coordinated
11 through the president's office. Again, there is no evidence
12 that Duane Woerth did anything. And so that is two big ones
13 right there, Judge.

14 MR. FRAM: Duane Woerth signed the transition
15 agreement. Your Honor pointed that out. It was negotiated
16 by the negotiating committee, approved by the entire MEC,
17 signed off on by Ron Kiel, negotiated --

18 THE COURT: You are talking about the transition
19 agreement.

20 MR. FRAM: Yes. That is what I think Mr. Press is
21 alluding to. I don't know how he can argue it wasn't
22 coordinated through the president's office. That is not a
23 violation. I think Mr. Rosen said as well that we are
24 dealing with guidelines, not policies. How is that harmful
25 to anybody? So yes --

1 THE COURT: I am sorry. If you don't do it.

2 MR. FRAM: Well, the fact of the matter, your
3 Honor, is that if there is a DFR violation in connection with
4 the transition agreement, it is during the period leading up
5 to the execution. It is unable to -- your Honor, if I can
6 make a note about the examples you had, you referred to
7 deliberately making misleading statements to employees. I
8 think this goes back to the defendant really underscores the
9 importance of the Deboles language that we talked about
10 before.

11 So we ask your Honor to consider that in
12 conjunction with that paragraph as well.

13 THE COURT: I am going to leave it as it is, but
14 subject to my reviewing Deboles, and Aguinaga, and other
15 cases. Find out whether Aguinaga was a support, and whether
16 it is a stand-alone case, we will see.

17 MR. FRAM: On the not disclosing conflicts issue --

18 THE COURT: Where are you?

19 MR. FRAM: Same sentence, that one-sentence
20 paragraph. Did I request before the instruction that it was
21 not improper in any way for Duane Woerth to go and talk to
22 the APA in late 2000? If I didn't, I would request that the
23 Court instruct the jury to that effect.

24 THE COURT: It is not improper.

25 MR. FRAM: It was not improper for ALPA as an

1 organization to adopt a unity resolution, or for Duane Woerth
2 in the wake of that to talk to APA --

3 THE COURT: Nobody testified in this case that
4 passing the unity resolution was a wrong or bad thing.

5 Nobody suggested that.

6 MR. FRAM: I think the jury is going to be confused
7 about that issue, your Honor. Our request would be to
8 clarify it by instructing the jury that until the TWA pilots
9 and the American pilots became adverse, there was nothing
10 improper that the unity resolution or Duane Woerth's going
11 and speaking to the board of the APA about it.

12 MR. PRESS: It is completely unnecessary, Judge. I
13 don't know why we would have another instruction on things
14 that are legal. Where are he going to stop?

15 MS. RODRIGUEZ: That is not an issue in the case.
16 There is nothing contested about it.

17 THE COURT: Well, I look at that differently. I
18 think he could shoot himself in the foot with that.
19 Remember, there was, he went to the APA, I think in November,
20 2000. But he went to the APA during a period they were
21 negotiating. Indeed, it is very conflicting testimony about
22 what was said. And the thing that says there is nothing
23 wrong prior to the acquisition by American and the TWA --
24 there is nothing wrong with the unity resolution or anyone
25 speaking to ALPA.

1 MR. PRESS: I see the distinction you are drawing.

2 THE COURT: Do you really want that?

3 MR. FRAM: Can I think about it over night?

4 THE COURT: Yes, think about it or, and tell me
5 Monday. I won't be here tomorrow. It seems to me you are
6 focusing with almost laser-like intensity a light on his
7 meeting about which there is some confusion, but he certainly
8 went to a meeting.

9 Now, his take on it, he went to the meeting to
10 encourage the pilots to be fair in their integration. That
11 is his recount of it. But you have a charge that any
12 visiting APA prior to January 9, whatever the date of the
13 announcement is, of the TWA acquisition, really, what does
14 that tell the jury? Forget that one. He went, why don't you
15 think about it.

16 MR. FRAM: Thank you.

17 MR. KATZ: Your Honor, may I make one comment about
18 this paragraph?

19 THE COURT: YES.

20 MR. KATZ: The union policies issue, Mr. Press
21 talked about the allegations in the case. My comment goes to
22 whether it is an example of bad faith for a union to not
23 follow one of the policies that it has. And the ALPA
24 administrative manual, like many union policies, is several
25 inches tall, and I respectfully submit, your Honor, that it

1 not automatically a breach of the duty of fair representation
2 violation, for a union to violate one of its policies. The
3 standard of the duty of fair representation is something else
4 entirely. And so, if it was automatically an example of bad
5 faith to violate a union policy, union members would be in
6 the federal courts all the time about a variety of things
7 that aren't truly justiciable -- That is even harder than
8 Aguinaga -- justiciable under the duty of fair
9 representation.

10 That was the point I wanted to make.

11 THE COURT: You make a point that I find
12 interesting.

13 MR. KATZ: Yes, sir.

14 THE COURT: Examples of bad faith include things
15 like deliberately making misleading statements to employees,
16 not disclosing records -- ignoring union policies if such
17 actions are the result of a bad faith motive as described
18 above.

19 MR. KATZ: If they result in harm --

20 THE COURT: No. No. No. Harm we will cover
21 later. In other words, I take your point. Not following a
22 particular policy for negotiation, or unions may have books,
23 you know, 100 pages long. Absolutely. It has to be
24 motivated or be the result of a bad faith motive, as I just
25 described in the previous paragraph.

1 MR. KATZ: Thank you, your Honor. I am sure you
2 know --

3 MR. PRESS: No. No problem with that.

4 THE COURT: I have to add that to be fair.

5 MR. KATZ: I am sure you know in a union meeting
6 there is frequently rough and tumble.

7 THE COURT: Rough and tumble?

8 MR. KATZ: Loud noises, scowls.

9 MS. RODRIGUEZ: On, not these guys.

10 MR. KATZ: Every time someone raised their voice in
11 a union meeting they could go to federal court we would have
12 a docket problem.

13 THE COURT: Don't worry about our docket problem.
14 I am not worried about it. Anything more?

15 MR. FRAM: My last request with respect to the
16 section 16, and I think your Honor made clear before how you
17 will rule on this is we did request an instruction about the
18 responsibilities of lawyers in recommending or pursuing
19 litigation. Those were our proposed charge 17. We had an
20 alternative charge.

21 THE COURT: Why. Paragraph 17?

22 MR. FRAM: No, it would be part of 16. We had a
23 proposed charge of 17, page 39 through 42 of the joint --

24 THE COURT: I think I have it. You are charged
25 with an excellent closing argument.

Exhibit O

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 18
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JULY 11, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND

20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.

AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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16

17 LYNNE JOHNSON, CSR, CM, CRR
18 OFFICIAL COURT REPORTER
19 UNITED STATES DISTRICT COURT
20 P.O. BOX 6822
21 LAWRENCEVILLE, NJ 08648.
22
23
24
25

1 concerned a little bit about causation in two respects. One,
2 we think the jury needs to understand that causation has to
3 be proven by the plaintiffs, you say that in the charge.

4 THE COURT: I say it in the charge, now I will be
5 saying it twice, with that paragraph.

6 MR. FRAM: But we also request, consistent with the
7 charge we submitted yesterday, that they be instructed that
8 they should not speculate about whether things might have
9 been different. We also request, given the instruction on
10 the verdict sheet that a separate section be included here
11 that focuses just on the issue of causation.

12 THE COURT: I am satisfied that the charge covers
13 that point. I mean more than happy.

14 MR. FRAM: We stand on the objections we made last
15 week as well.

16 THE COURT: Of course. Okay.

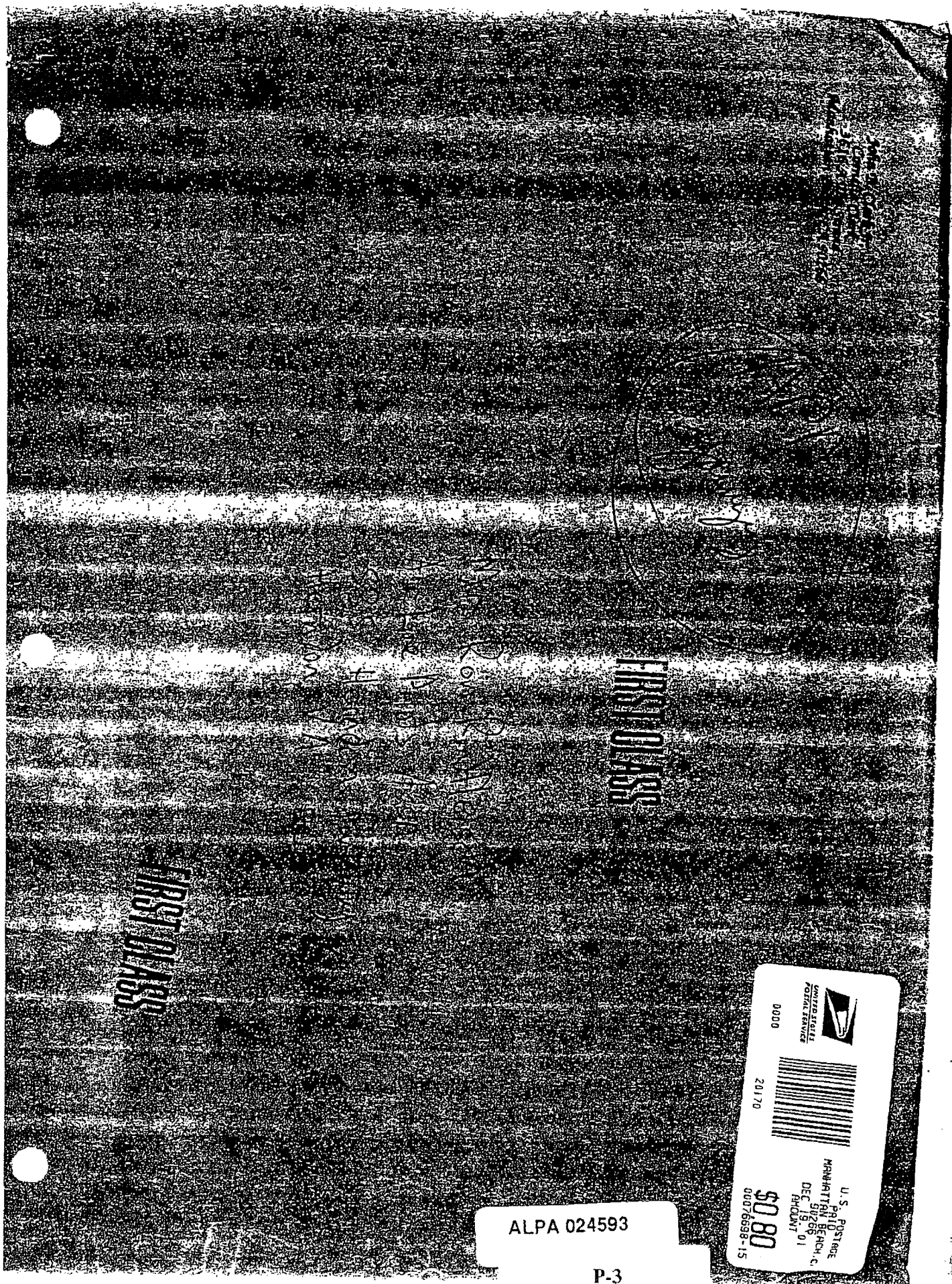
17 MR. FRAM: Thank you.

18 THE COURT: I am going to mark what is now draft
19 number 4 of the charge, and draft number 3 of the jury
20 verdict, as C 3 and C 4. And before we close I will mark the
21 exhibit, the final char charge.

22 MS. RODRIGUEZ: The jury instructions are C 3 and
23 the charge is C 4.

24 THE COURT: The other way around -- no, you are
25 right. C 3 will be the charge, and C 4 will be the verdict

Exhibit P



POST OFFICE

POST OFFICE



Hunnibell 3

ALPA 024593

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December 18, 2001

Mr. Ron Rindfleisch
Air Line Pilots Association
535 Herndon Parkway
Herndon, VA 20170

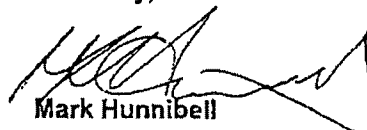
Ron:

I have attached documents supporting the reimbursement request that I understand John Clark has filed. I cannot presently locate receipts for some of the smaller items that are reflected as incurred by me in the spreadsheet. Still, I have documentation for the "big ticket" items as attached:

1. Copies from microfiche of my three payments to Primadata, Inc. (the printer/mailer who produced and mailed the cover letter and authorization cards). I do not get actual copies of cancelled checks and, if I was provided with a complete "PAID IN FULL" receipt, I cannot find it. These checks, and the accompanying invoice, are the best I have.
2. 5/15/2001 invoice from Primadata, Inc. for the handling and postage for the card mailing. Note that this does not include the amount for the actual printing the letters, envelopes, and authorization cards. That was billed separately for \$1,276.94 and I cannot find that invoice, but I do have the cancelled check in that amount, (#6120, 5/22/2001) that includes my memo of the purpose of the check. The balance due on the 5/15/2001 Primadata invoice (\$1,462.14) was also paid on 5/22/2001 with my check #6119. The \$2,000 reflected on the invoice as "Deposit" was paid on 5/9/2001 with my check #6107.
3. 5/14/2001 USPS certificate of mailing. This was not paid directly by me. The amount was included in the invoice from Primadata, Inc.
4. Copy of the room charges (\$114.25) applied to my credit card on 7/23/2001. The total charge was actually split between John Clark and myself (which is why it still shows a balance due identical to what I had charged on my card). John will no doubt be submitting the other half of this expense.
5. Ten (10) e-mail notices of setup and billing for the aa-alpa.org web site. These costs continue to be billed monthly to my personal credit card. The invoices may be a little hard to follow, but the charges I incurred were \$84.44 for initial setup and the first 6 months, plus \$10 per month after that (\$50), plus \$25 on 12/4/2001 to re-register the domain (Total: \$159.44).

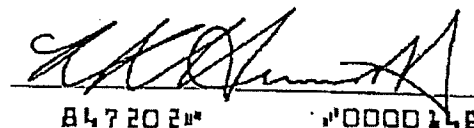
I believe the total expenses reflected above (\$5,012.77) substantially exceed the amount for which I am seeking reimbursement. Please let me know if you need more information.

Sincerely,



Mark Hunnibell

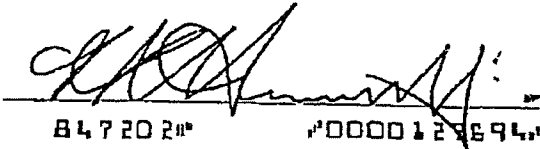
ALPA 024594

<p>MARK L. HUNNIBELL AND LAURA S. HUNNIBELL 203-457-9872 2611 LONG HILL RD. GUILFORD, CT 06437</p>	<p>ALLIED PILOTS ASSOCIATION FEDERAL CREDIT UNION 387 SHUMAN BLVD., SUITE 303E NAPERVILLE, IL 60563-8453</p>	<p style="text-align: right;">6119 70-9321/719 5/22/2001</p>
<p>PAY TO THE ORDER OF <u>Primadata</u> \$ **1,462.14</p>		
<p><u>One Thousand Four Hundred Sixty-Two and 14/100*****</u> DOLLARS</p>		
<p>Primadata 1228 West Scyene Road Suite 130 Mesquite, TX 75149-3127</p>		
<p>MEMO <u>Mail Services & Postage 151.44</u> </p>		
<p>⑈006119⑈ ⑈071993214⑈ 847202⑈ ⑈0000146214⑈</p>		

Acct: 847202 Check #: 6119
Amt: \$1,462.14 Date: 05-31-2001

<p>0710-0035739-1532-12091532-10 050335739-05-31-01-1532-10 050335739-05-31-01-1532-10 050335739-1532-12091532-10</p>	<p style="text-align: right;">1001 55405</p>
<p>071000012 PAID 5/31/01 07301294</p>	

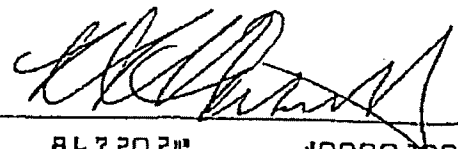
Sequence #: 2388630

MARK L. HUNNIBELL AND LAURA S. HUNNIBELL 203-457-9872 2611 LONG HILL RD. GUILFORD, CT 06437	ALLIED PILOTS ASSOCIATION FEDERAL CREDIT UNION 357 SHUMAN BLVD., SUITE 300 NAPERVILLE, IL 60563-8453	6120 70-9321/719 5/22/2001
PAY TO THE ORDER OF Primadata		**1,276.94
One Thousand Two Hundred Seventy-Six and 94/100*****		DOLLARS
Primadata 1228 West Scyene Road Suite 130 Mesquite, TX 75149-3127		
MEMO Postcard/Env/Letter 15142		 847202 0000127694
006120 071993214		

Acct: 847202 Check #: 6120
 Amt: \$1,276.94 Date: 05-31-2001

0710-0850-11 00582971855 050335738 102204 00582971855 050335738 05-31-01 CIRC 050335738 1532-14 00582971855 071000013 MARK ONE 05/31/01 07301253	1091 5 70155
---	--------------------

Sequence #: 2388628

MARK L. HUNNIBELL AND LAURA S. HUNNIBELL 203-457-9872 2611 LONG HILL RD. GUILFORD, CT 06437	ALLIED PILOTS ASSOCIATION FEDERAL CREDIT UNION <small>387 SHUMAN BLVD., SUITE 303E NAPERVILLE, IL 60563-8453</small>	6107 <small>70-8321/719</small> 5/9/2001
PAY TO THE ORDER OF <u>Primadata</u>		\$ **2,000.00
Two Thousand and 00/100*****		DOLLARS
Primadata 1228 West Scyene Road Suite 130 Mesquite, TX 75149-3127		 Mark Hunnibell for Vice Presiden
MEMO <u>Mark Hunnibell for Vice Presiden</u> ⑈006107⑈ ⑈071993214⑈		847202⑈ ⑈0000200000⑈

Acct: 847202 Check #: 6107
 Amt: \$2,000.00 Date: 05-14-2001

0002357512 05/14/2001	0710-0030-1 060641632 0710-0030-1 060641632 05-14-01 060641632 1753 1293 04 06 110	MAY 11 01 1019 20227
071000013 WE DE 05/13/01 07066382		FOR DEPOSIT ONLY PRIMADATA, INC. 950006912

Sequence #: 2357512

Primadata, Inc.

1228 Scyene Road, Suite 134
 Mesquite, Texas 75149-3128
 (972) 216-9910

Invoice

Invoice Number: 15144
 Invoice Date: 05/15/01

Sold To:

Ship To:

Hunnibel For Vice President
 2611 Long Hill Road
 Guilford, CT 06437-3616

Mesquite PO

Attn: Mark

Delivered Via: Mesquite PO
 Delivery Date: 05/14/01
 Terms: Net 10

P.O. Number: Mark
 P.O. Date:
 Salesperson: PDI

Quantity	Description	Price
11091	MAIL SERVICES HUNNIBELL FOR VICE PRESIDENT (Data Conversion-E Mail, Data Hygiene, Address Corrections, De Dupe, Ink Jet Envelope, Fold Letter, Insert 2 Pieces, Seal, Zip Sort, Sleeve & Strap Trays, Deliver To Mesquite PO, UPS Overs To Mark)	1332.56
11091	POSTAGE . POSTAGE SAVINGS \$643.98 (Presorted STD--Automated)	2129.58

Subtotal: 3462.14

Tax:

Deposit: 2000.00

Past 30 days subject to 1.50% interest (18% A.P.R.)

Thank You for your business!

Total: \$ 1462.14

05/24/2001 04:12 9722169904

PRIMADATA, INC.

PAGE 01

3602 POSTAL SERVICE PERMIT SYSTEM TRANS# 200113415200/00M1
STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE

STATION OR UNIT: MESQUITE MAIN POST OFFICE
FINANCE NUMBER : 48-5860

COMPANY PERMIT USED: Y
PERMIT NO: 00072

PRIMADATA INC
1228 W SCYENE RD STE 134
MESQUITE TX 75149-3128

DUPLICATE

DATE OF MAILING 05/14/01	CLASS STANDARD	PROC CAT LETTERS	TYPE BULK REGULAR
WEIGHT OF SINGLE PIECE (LBS) 0.0300		TOTAL PIECES 11,082	TOTAL POUNDS 332.4600
MAILED: FOR PERMIT NO. 80646 NAME: MARK HUNNIBEL		<p>RECEIVED MAY 15 2001</p> <p>AFFIXED POSTAGE: AMOUNT FROM TRUST: \$2,126.52</p>	
CONTAINERS 64			
NBRVP: ERRORS: 0.00%			

I CERTIFY that this mailing has been inspected concerning:
1)eligibility for the rate of postage claimed; 2)proper preparation
(and presort where required); 3)proper completion of the statement of
mailing; and 4)payment of the required annual fee.

MESQUITE TX 75149
MAY 14 2001
ROUND STAMPS REQUIRED
TIME _____ AM / PM

ROUND STAMP REQUIRED
TIME _____ AM / PM

[Signature]
SIGNATURE OF WEAHER

RECEIVED FOR PROCESSING BY

COMMENTS:

REMAINING ON DEPOSIT:

\$7.39

CLK INIT: DJE

ALPA 024599

mark@hunnibell.net

From: Minerva Technical Support [support@minerva.net]
Sent: Saturday, January 27, 2001 12:19 PM
To: mark@hunnibell.net
Subject: New Domain Information

Hello Mark,

Thank you for choosing Minerva Network Systems as your Internet Solutions Provider. We are pleased to inform you that your order has been processed. The following information will grant access to your account:

Company Name: Alpa Now
Contact Name: Mark Hunnibell
Contact Phone Number: 203-457-9872

Domain Name: aa-alpa.org
IP Address: 206.239.54.14

FTP Username: alpanow
FTP Password: #####

Home Page or Start file: index.html

Please review the technical information above and let us know if any changes are necessary.

If you require an email(s) account for your website (example: yourname@yourdomain.com) or if you have any additional technical questions or concerns, please contact support@minerva.net or reply to this email.

For all other inquiries or account changes, please contact the following:

Technical Support:
support@minerva.net
1.888.667.7231 ext. 1
703.263.3300

Sales Issues:
sales@minerva.net
1.888.667.7231 ext. 2
703.263.2200

Billing Issues:
billing@minerva.net
1.888.667.7231 ext. 3
703.263.0796 ext. 3

You may also visit our website for additional information at www.minerva.net. Thank you for choosing Minerva.

Geoffrey Watson
Minerva Technical Support

mark@hunnibell.net

From: billing@minerva.net
Sent: Tuesday, January 30, 2001 7:49 PM
Subject: Periodic Billing Order 1163-1 Submitted

Periodic Billing Order
Order # 1163-1 Submitted

Amount: 10.00
Tax: 0.00
Shipping: 0.00
Customer: mark hunnibell
Company: Minerva Network Systems
Address: 2611 Long hill Rd

City: Guilford
State: CT
Country: US
Zip: 06437

Periodic Billing Information
Startdate: 2001/07/03
Periodicity: m1
Installments: 99
Threshold: 3
Comments:

mark@hunnibell.net

From: MNS Accounts & Billing [billing@minerva.net]
 Sent: Wednesday, February 07, 2001 4:41 PM
 To: mark@hunnibell.net
 Subject: Bill 2/6/01

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394
 ACCOUNT STATUS
 Previous Balance \$0.00
 Payments \$84.44 CR
 Adjustments \$0.00
 Current Charges \$84.44
 CURRENT BALANCE \$0.00
 BILL NUMBER 932
 BILL DATE Feb 6, 2001
 DUE DATE Mar 8, 2001

Your account is current. Do not send payment.

 Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231.

PAYMENTS

Date	Description	Amount
Jan 30	Credit Card Payment MC	\$84.44 CR
	TOTAL PAYMENTS	\$84.44 CR

CURRENT CHARGES

Date	Description	Amount
Jan 25	Set up fee	\$35.00
	Set-Up Fees	\$10.00
	Additional Services Domain Registration	\$25.00
Jan 30	Basic Account 6 month pre-pay: MNS-394-1 (Jan 25 - Jun 3)	\$49.44
	6 Month Fee with 5% discount: (86.74% of \$57.00)	\$49.44
	TOTAL CURRENT CHARGES	\$84.44

mark@hunnibell.net

From: billing@minerva.net
 Sent: Monday, July 02, 2001 10:32 AM
 To: mark@hunnibell.net
 Subject: Bill 07/02/2001

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous balance	\$0.00
Payments	\$0.00
Adjustments	\$0.00
Current Charges	\$44.13
TOTAL AMOUNT DUE	\$44.13

BILL NUMBER	2691
BILL DATE	Jul 2, 2001
DUE DATE	Aug 1, 2001

The total amount due will be automatically charged
 to your credit card. Do not send payment.

Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or
 1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00
 or more.

CURRENT CHARGES

Date	Description	Amount
Jul 2	Basic account 6 month pre pay: MNS-394-1 (Jul 1 - Jul 24)	\$44.13
	Monthly Fee: (77.42% of 57)	\$44.13
	TOTAL CURRENT CHARGES	\$44.13

mark@hunnibell.net

From: billing@minerva.net
Sent: Wednesday, August 01, 2001 3:27 PM
To: mark@hunnibell.net
Subject: Bill 08/01/2001

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
Alpha Now
2611 Long Hill Rd
Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous Balance	\$10.00
Payments	\$0.00
Adjustments	\$0.00
Current Charges	\$0.00

TOTAL AMOUNT DUE \$10.00

BILL NUMBER 3032
BILL DATE Aug 1, 2001
DUE DATE Aug 31, 2001

The total amount due will be automatically charged
to your credit card. Do not send payment.

Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or
1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00
or more.

mark@hunnibell.net

From: billing@minerva.net
 Sent: Friday, August 31, 2001 1:38 PM
 To: mark@hunnibell.net
 Subject: Bill 8/31/01

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous Balance	\$10.00
Payments	\$10.00 CR
Adjustments	\$0.00
Current Charges	\$10.00
TOTAL AMOUNT DUE	\$10.00

BILL NUMBER	3351
BILL DATE	Aug 31, 2001
DUE DATE	Sep 30, 2001

The total amount due will be automatically charged
 to your credit card. Do not send payment.

 Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or
 1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00
 or more.

PAYMENTS

Date	Description	Amount
Aug 3	Credit Card Payment M	\$10.00 CR
	TOTAL PAYMENTS	\$10.00 CR

CURRENT CHARGES

Date	Description	Amount
Aug 31	Basic Pkg - 10MB 1GB traffic/month 5 email accounts: MNS-	\$10.00
	Monthly Fee	\$10.00
	TOTAL CURRENT CHARGES	\$10.00

mark@hunnibell.net

From: billing@minerva.net
 Sent: Monday, October 01, 2001 1:01 PM
 To: mark@hunnibell.net
 Subject: Bill 10/1/01

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous Balance \$10.00
 Payments \$10.00 CR
 Adjustments \$0.00
 Current Charges \$10.00
 TOTAL AMOUNT DUE \$10.00

BILL NUMBER 3673
 BILL DATE Oct 1, 2001
 DUE DATE Oct 31, 2001

The total amount due will be automatically charged
 to your credit card. Do not send payment.

 Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or
 1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00
 or more.

PAYMENTS

Date	Description	Amount
Sep 4	Credit Card Payment	\$10.00 CR
TOTAL PAYMENTS		\$10.00 CR

CURRENT CHARGES

Date	Description	Amount
Oct 1	Basic Pkg - 10MB 1GB traffic/month 5 email accounts: MNS-	\$10.00
	Monthly Fee	\$10.00
TOTAL CURRENT CHARGES		\$10.00

mark@hunnibell.net

From: billing@minerva.net
 Sent: Thursday, November 01, 2001 3:13 PM
 To: mark@hunnibell.net
 Subject: Bill 11/1/01

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous Balance	\$10.00
Payments	\$35.00 CR
Adjustments	\$0.00
Current Charges	\$35.00
TOTAL AMOUNT DUE	\$10.00

BILL NUMBER	4005
BILL DATE	Nov 1, 2001
DUE DATE	Dec 1, 2001

The total amount due will be automatically charged to your credit card. Do not send payment.

Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or 1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00 or more.

PAYMENTS

Date	Description	Amount
Oct 3	Credit Card Payment m	\$10.00 CR
Oct 3	Credit Card Payment M	\$25.00 CR
TOTAL PAYMENTS		\$35.00 CR

CURRENT CHARGES

Date	Description	Amount
Oct 3	Basic Pkg - 10MB 1GB traffic/month 5 email accounts: MNS-	\$0.00
	Monthly Fee: (93.55% of \$10.00)	\$9.35
	Discount: 100%	\$9.35 CR
Oct 3	Set up Domain and Registration for 1 year: MNS-394-4	\$25.00
	Set up Domain and Registration for 1 year	\$25.00
Oct 31	Basic Pkg - 10MB 1GB traffic/month 5 email accounts: MNS-	\$10.00
	Monthly Fee	\$10.00
TOTAL CURRENT CHARGES		\$35.00



THE WASHINGTON COURT HOTEL

◆ ON CAPITOL HILL ◆

A Harbaugh Hotel

525 NEW JERSEY AVE., N.W., WASHINGTON, D.C. 20001 202-628-2100 FAX: 202-879-7918

CLARK, JOHN
AIR LINE PILOTS ASSN

ARRIVAL
DEPARTURE
NO. IN PARTY
RATE

7/22/01

7/23/01

2

169.00

CC#: [REDACTED] 7029 Exp: 06/03

ACCOUNT NO.

403115

ROOM NO.

1008

NO.	DATE	DESCRIPTION	AMOUNT
A-STANDARD			
7/22/01	LOCAL PHONE	1008 7220072001 23:55	\$1.00
7/22/01	ROOM CHARGE	1008 12	\$169.00
7/22/01	ROOM TAX	1008 13	\$24.51
7/23/01	LONG DISTANCE PHONE	1008 7230139002 10:06	\$1.00
7/23/01	CAFE & GRILL	1008 1538 10:48	\$32.99
7/23/01	MASTERCARD	1008 5602824 [REDACTED] 7029	\$114.25
* BALANCE DUE			\$114.25

MARK L HUMNIBELL

06/03

7029

1008

DATE	CHECK DATE
07/23/01	
REF. AUTH. NO.	AMOUNT
CHECK NO./POLY. NO.	SURVEY
REFERENCE NO.	CASHIER

072201

5602824

PURCHASED BY:

TYPE OF CREDIT CARD	
<input type="checkbox"/> MC	<input type="checkbox"/> AX
<input type="checkbox"/> VISA	<input type="checkbox"/> DISCVR
<input type="checkbox"/> MC	<input type="checkbox"/> OTHER

SAFEFILE® U.S. Pat. 4,463,798

AUTH. DATE	AUTH. CODE	AUTH. AMOUNT

**CUSTOMER COPY
IMPORTANT:
RETAIN THIS COPY FOR YOUR RECORDS.**

STREET

CITY

STATE

ZIP CODE

Regardless of charge instructions, I acknowledge the above as personal indebtedness.

GUEST SIGNATURE

ALPA 024600

mark@hunnibell.net

From: billing@minerva.net
 Sent: Friday, November 30, 2001 12:42 PM
 To: mark@hunnibell.net
 Subject: Bill 11/30/01

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous Balance	\$10.00
Payments	\$10.00 CR
Adjustments	\$0.00
Current Charges	\$10.00
TOTAL AMOUNT DUE	\$10.00

BILL NUMBER	4344
BILL DATE	Nov 30, 2001
DUE DATE	Dec 30, 2001

The total amount due will be automatically charged to your credit card. Do not send payment.

Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or 1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00 or more.

PAYMENTS

Date	Description	Amount
Nov 29	Credit Card Payment mc	\$10.00 CR
	TOTAL PAYMENTS	\$10.00 CR

CURRENT CHARGES

Date	Description	Amount
Nov 30	Basic Pkg - 10MB 1GB traffic/month 5 email accounts: MNS-	\$10.00
	Monthly Fee	\$10.00
	TOTAL CURRENT CHARGES	\$10.00

mark@hunnibell.net

From: billing@minerva.net
 Sent: Tuesday, December 04, 2001 4:50 PM
 To: mark@hunnibell.net
 Subject: Bill 12/4/01

MINERVA NETWORK SYSTEMS, INC.

Mark Hunnibell
 Alpha Now
 2611 Long Hill Rd
 Guilford, CT 06437

CUSTOMER ID MNS-394

ACCOUNT STATUS

Previous Balance \$10.00
 Payments \$35.00 CR
 Adjustments \$0.00
 Current Charges \$25.00

CURRENT BALANCE \$0.00

BILL NUMBER 4475
 BILL DATE Dec 4, 2001
 DUE DATE Jan 3, 2002

Your account is current. Do not send payment.

Thank you for your business!

For customer assistance please call 1-888-MNS(667)-7231 or
 1-703-263-0796.

Late fees: \$15.00 on all over due balances of \$20.00
 or more.

PAYMENTS

Date	Description	Amount
Dec 4	Credit Card Payment mc	\$10.00 CR
Dec 4	Credit Card Payment mc	\$25.00 CR
TOTAL PAYMENTS		\$35.00 CR

CURRENT CHARGES

Date	Description	Amount
Dec 4	Set up Domain and Registration for 1 year: MNS-394-5	\$25.00
	Set up Domain and Registration for 1 year	\$25.00
TOTAL CURRENT CHARGES		\$25.00

Trip to LAS on 12/05/01

LS TRANSPORTATION
CALL AHEAD
AIRS. FOR RESERVATION
702-740-4050
KET # 07.50
-TRP STPP 7.50
AL 7.50
:PD 7.50
H 7.50
T RESPONSIBLE FOR
MISSED FLIGHTS
RK3 NO.606316
.05.WED 13:14 #01-1

to Louis Hotel

THE "CAB COMPANIES"
Las Vegas, Nevada
873-2227
COMPUTER RADIO DISPATCHED

DRIVER: _____ DATE: 12/05/01
(CHARGE THE ACCT. OF)
(RECEIVED OF)
FOR TAXI FARE FROM Louis Hotel
TO LAS Airport
(X) DRIVER NAME _____
(X) PASSENGER SIGNATURE _____
AMOUNT \$15.00

trip to LAS
on 12/05/01
while at LAS

LAX-CPCS
EMERGENCY 12-005-0116521
EXIT 16 12-05-01 17:22
ID NO 118 FEE \$ 15.00
LP# NV 0184 SEQ 2919

ALPA 024611

Corresponds to spread sheet

Visit our Web Site at: WWW.MBE.COM

Postal transactions may have received a handling fee.

Qty	Description	Unit	Ext
2	Stamps		13.60
	Sub Total:		13.60
	Tax:		0.00
	Total Sales:		13.60
	Cash:		20.00
	Change:		6.40

Center #3268
2110 ARTESIA BLVD #8
REDONDO BEACH, CA 90278
Phone 310 318 3000

Shift: 0168 Dm: 01 ID: 1228 Clerk: Amy
0/14/01

Making Business Easier... Worldwide
Mail Boxes Etc.
***** SALE *****

Taxi Cab Receipts

DATE: 7/23/01 TIME: 11:00 PM

TRIP ORIGIN: Washington Court Hotel

DESTINATION: Knob's

FARE: \$10.00 SIGNATURE: _____

OFFICE DEPOT
1700 ROSECRANS AVE.
MANHATTAN BEACH, CA 90266
310-536-9969

Employee 210160 06/07/01 17:01
Store #0967 Reg #002 Tran #8889
SALE POS Version 4.07

7878704625 GUIDE, CARD, A 3.49
NFG. LIST \$ 5.80
7169138977 BX, SHOE, 1.50 5.56
4 @ 1.39
HFB. LIST \$ 2.49
CA 8Z SALES TAX 9.05
SUBTOTAL 9.77
TOTAL 10.77

CHANGE 1.00

Try our COPY CENTER for
Printing and Copying Services

EL SEGUNDO MAIN PO
EL SEGUNDO, California
902439998
07/18/2001 (310) 322-7238 Dt: 40:08 PM

Product Description	Qty	Unit Price	Final Price
\$6.80 Statue of Liberty PSA Bk	1	\$6.80	\$6.80
\$6.80 Apple & Orange PSA Bk	1	\$6.80	\$6.80
Total:			\$13.60

Paid by: Cash \$13.60

For information on current postage rates, visit our web site at www.usps.com.
Bill #: 3000400300173
Clerk: 10

Thank you for your business

RECEIPT

No. 241660

FROM John B Clark Jr.

DOLLARS

FOR RENT Box 215

ACCT 66 CASH ☐ CHECK ☐ MONEY ☐

DATE 5/4/01 TO 9/4/01

BY Mel

ALPA 024612

Corresponds to spread sheet

Kirkco's (202) 547-5421
317 PENNSYLVANIA AVE SOUTHEAST
WASHINGTON, DC 20003

QTY/LIST	DISC	PRICE	AMOUNT
3 Office SUPPLIES			
0.67	0.00	0.67	2.07
38 PC SS WKK STATION TIME/MIN			
0.20	0.00	0.20	7.60
19 COMP RENT LTR. LGL. B&W PRNT			
0.49	0.00	0.49	9.31
13 ES COLOR S/S LTR. LGL			
1.00	0.00	1.00	13.00

SUB 31.98 TX 1.84 TOT 33.82
MasterCard 33.82
CIB 0.00

XXXXXXXXXXXX4654 08/02 AP005645

I agree to pay the above amount
according to the card issuer agreement.
Sign Here: X

CN4918 TR 640116 RG 3A 07/23/01 01:20
Visit us @ <http://www.kirkco.com>

USPS, REDONDO BEACH MAIN
REDONDO BEACH, California
902779998
05/15/2001 (310)376-3252 04:31:35 PM

Product Description	Sale Qty	Unit Price	Final Price
Business Reply Mail	25		
Account Number:			
Customer Name:			
Address:			
Amount of Deposit:			\$500.00
Total:			\$500.00
Paid by:			
Check	4146205		\$500.00

Business Reply Mail
Account Number: 25
Customer Name: ALPA REPRESENTATION CAMP
AIGN
Address: JOHN
Amount of Deposit: \$500.00
Total: \$500.00
Paid by:
Check 4146205 \$500.00

Visit our Web Site at: WWW.NBE.COM

Postal transactions may have received a handling fee.

Qty	Description	Unit	Ext
1	Mailbox Service	5.00	5.00
	Sub Total:		5.00
	Tax:		0.00
	Total Sale:		5.00
	Cash:		5.00
	Change:		0.00

***** SALE *****
Mail Boxes Etc.
Making Business Easier. Not/dm/de.

Shift: 0141 DRY: 01 ID: 1401 Clerk: AMY
5/15/01
Center #2289
2110 ARTESIA BLVD #8
REDONDO BEACH, CA 90278
Phone 310 316 3000
17:03:57

Bill #: 100300228904
Clerk: 14

Paid by: 4146205
Check: \$500.00

Total: \$500.00

Address: JOHN CLARK
3616 A THE STRAND
Amount of Deposit: \$0.00
Annual Fee: \$125.00
Accounting Fee: \$375.00

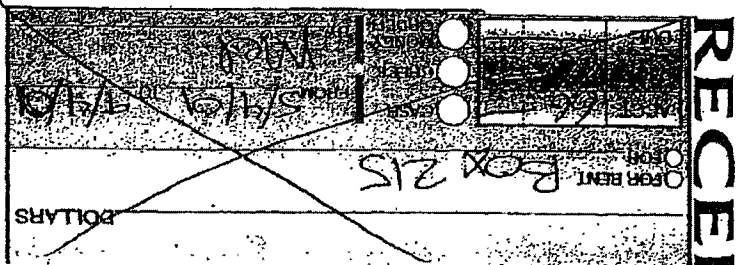
Business Reply Mail
Account Number: 100300000010
Customer Name: ALPA REPRESENTATION CAMP
AIGN

Product Description	Sale Qty	Unit Price	Final Price
Business Reply Mail	25		
Account Number:			
Customer Name:			
Address:			
Amount of Deposit:			\$0.00
Annual Fee:			\$125.00
Accounting Fee:			\$375.00
Total:			\$500.00
Paid by:			
Check:	4146205		\$500.00

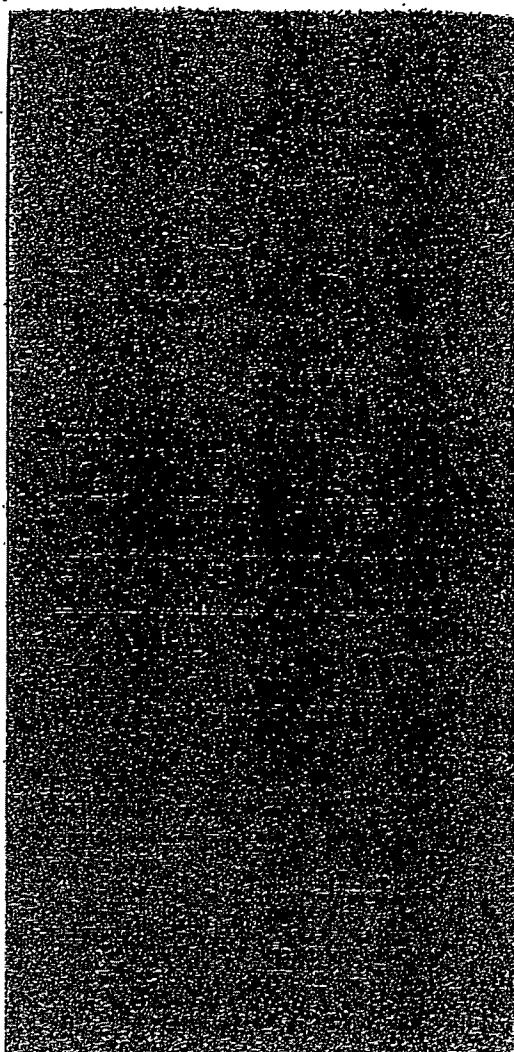
USPS, REDONDO BEACH MAIN
REDONDO BEACH, California
902779998
05/04/2001 (310)376-3252 05:05:16 PM

SPAM AT collector

ALPA 024613



Corresponds to spread sheet



MAIN OFFICE USPS
MANHATTAN BEACH, California
902659998
06/02/2001 (310)937-9569 01:57:31 PM

Product Description	Sale Qty	Receipt Unit Price	Final Price
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INCLINE VILLAGE NV 89451 First-Class			\$0.76
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Issue PVI: \$0.76

INCLINE VILLAGE NV 89451 First-Class			\$0.76
---	--	--	--------

Issue PVI: \$0.76

INCLINE VILLAGE NV 89451 First-Class			\$0.76
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Issue PVI: \$0.76

TUSTIN CA 92780 First-Class			\$0.76
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Return Receipt \$1.50

Certified \$1.90

Label Serial #: 70001530000283528118

Issue PVI: \$4.16

\$6.80 Flowers PSA Bk	1	\$6.80	\$6.80
--------------------------	---	--------	--------

Total: \$13.24

Paid by:

Cash \$15.00

Change Due: -\$1.76

NetPost Mailing Online lets you send
your mailings right from your computer!
It's quick, easy and online at
www.usps.com.

Bill#: 1000600743131

Clerk: 16

— Thank you for your business —

ALPA 024614



THE WASHINGTON COURT HOTEL

◆ ON CAPITOL HILL ◆

A Harbaugh Hotel

525 NEW JERSEY AVE., N.W., WASHINGTON, D.C. 20001 202-628-2100 FAX: 202-879-7918

CLARK, JOHN
AIR LINE PILOTS ASSN

1/2 hotel stay in DCA

ARRIVAL
DEPARTURE
NO. IN PARTY
RATE

7/22/01

7/23/01

2

169.00

CC#: 5471211540017029 Exp: 06/03

ACCOUNT NO.

403115

ROOM NO.

1008

NO.	DATE	DESCRIPTION	AMOUNT
7/22/01		ROOM CHARGE	169.00
7/22/01		TAXES	13.00
7/22/01		ROOM SERVICE	13.00
7/23/01		ROOM CHARGE	169.00
7/23/01		TAXES	13.00
7/23/01		ROOM SERVICE	13.00
7/23/01		MASTER CHARGE	5471211540017029
7/23/01		MASTER CHARGE	5471211540017029
		TOTAL	514.00

COMPANY

STREET

CITY

STATE

ZIP CODE

By signing of charge instructions, I acknowledge the above as correct and agree to pay.

GUEST SIGNATURE

ALPA 024615

Exhibit Q

From: Holtzman, David, TWAMEC
Sent: Thursday, May 24, 2001 05:32 PM
To: Herndon, Christy, Bob.; Herndon, Roberts, William.; Herndon, Rosen, Seth.; Roland,
Wilder,
Subject: FW: APA Information Hotline - May 23, 2001
Attachments: Header

-----Original Message-----

From: Warner, Clay, Herndon
Sent: Thursday, May 24, 2001 3:50 PM
To: 'sunshine.lawyer@att.net'
Cc: Holtzman, David, TWAMEC
Subject: FW: APA Information Hotline - May 23, 2001

Mike:

The attached email describes the results of the APA national officer elections. I have been told that both Gross and Petretti support realignment with ALPA, and that Darrah does not. The APA Constitution states that the two-year terms of local representatives begin on November 1 and May 1. (Apparently the terms are staggered.) I presume that the results of the May 1 elections have been completed, and that the November 1 election round has not begun. Call me if you have any questions.
Clay

-----Original Message-----

From: Rindfleisch, Ron, Herndon
Sent: Thursday, May 24, 2001 3:46 PM
To: Warner, Clay, Herndon
Subject: FW: APA Information Hotline - May 23, 2001

APA INFORMATION HOTLINE - May 23, 2001

This is Gregg Overman, APA Director of Communications, with the APA Information Hotline for Wednesday, May 23.
The ballots have been tallied for the APA President, Vice President, and Secretary-Treasurer elections. For President, Captain John E. Darrah received 3,757 votes, Captain Jim Gross received 320 votes, and Captain Dennis Petretti received 1,085; therefore, Captain John Darrah is elected APA President. For Vice President, First Officer Robert R. Ames received 3,681 votes and Captain Mark Hunnibell received 1,335 votes; therefore, First Officer Ames is elected Vice President. For Secretary-Treasurer, First Officer John Bury received 2,834 votes, Captain David P. Duquemin received 754 votes, and Captain Paul Renneisen received 1,130 votes; therefore, First Officer John Bury is elected Secretary-Treasurer. The three-year term of office for APA's National Officers begins on July 1, 2001. As reported previously, APA will host a meeting of the Coalition of Airline Pilots Associations, known as CAPA, at APA headquarters tomorrow and Friday, May 24 and 25. Also tomorrow, the DFW Domicile is hosting an invitation-only luncheon to recognize the medical team, family members and others who helped Captain Jay Straub with the life-threatening injuries he suffered in November 1999 when a jet bridge at DFW collapsed. Please remember that both credit union accounts will remain open until the end of the month for contributions to the First Officer Rich Racsko reward fund. At

EXHIBIT

236

DL0009127

P-236

the APAFCU, the account number is 9020731, and at the AAFCU, the account number is 999994183. That's it for now. Thanks for calling.

DOMICILE MEETINGS

DFW-Thursday, May 24 -
11:00 AM - 2:00 PM
Straub luncheon
D/FW Airport Marriott
8440 Freeport Parkway
972-929-8800.

LAX-Wednesday, June 6 -
meeting from 10 AM - 2 PM
lunch will be provided
Shelter Point Hotel and Marina, 1551 Shelter Island Drive, San Diego,
CA
tel. 800-566-2524 or 619-221-8000.

RETIREMENT PLANNING SEMINAR -

SFO-Wednesday, July 11 -
Embassy Suites, 250 Gateway Blvd., San Francisco, CA
tel. 650-589-3400. To ensure your place, please call APA at
800-323-1470, ext. 2142 by July 2. For hotel reservations, call the Embassy
Suites by June 25. This program is for all American Airlines pilots and
spouses only.

DL0009128

Exhibit R



**TWA MEC
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

500 NORTHWEST PLAZA, SUITE 1200 D ST. ANN, MISSOURI 63074 D 314-770-8500

October 23, 2001

***VIA FACSIMILE (817-302-2119) &
OVERNIGHT DELIVERY***

Captain John E. Darrah
President
Allied Pilots Association
14600 Trinity Boulevard, Suite 500
Fort Worth, Texas 76155-2512

***VIA FACSIMILE (817-967-1843) &
OVERNIGHT DELIVERY***

Captain Jeffrey Brundage
Vice President
American Airlines, Inc.
P.O. Box 619616, MD 5235
Dallas Ft. Worth Airport, TX 75261-9616

Gentlemen:

The TWA Pilots Master Executive Council, Air Line Pilots Association, International AFL-CIO, voted this afternoon to accept the seniority integration proposal made by the Allied Pilots Association on Saturday, October 20, 2001, supplemented by the written conditions and restrictions delivered to us on Sunday, October 21, 2001, with the following additional conditions:

1. The Allied Pilots Association ("APA") mitigates the scheduled 409 furloughs of AA pilots.
2. Upon completion of the AA-APA mitigation agreement mentioned above, AA will provide a written guarantee to the Air Line Pilots Association ("ALPA") that AA will furlough no pilots until the third quarter of 2002.
3. American Airlines, Inc. shall enter into an agreement assuring that the number of pilots flying out of the St. Louis domicile as of November 1, 2001 shall decrease no more than identically timed decreases in the pilot population of the AA System (excluding STL) to a maximum of 20 percent, according to the formula described by AA Vice President Brundage on October 22, 2001.

P-343

Captain John E. Darrah
Captain Jeffrey Brundage
October 23, 2001
Page 2

4. The following definitions applicable to the APA proposed conditions and restrictions shall be adopted.

- A. "Hardship transfer" shall have the same meaning as defined in relevant AA/APA agreements. These agreements shall be provided to ALPA. The TWA Pilots' understanding of "hardship transfer" is that the AA Pilots who, pursuant to the hardship transfer provision, transfer or are displaced into STL will bid behind the TWA Pilots.
- B. For purposes of B paragraphs 7, 8, 9, 11 and 12, the following shall apply:
 - (i) The term "small widebody" shall replace "767."
 - (ii) The term "narrowbody" shall replace "S80" and "717."
- C. For purposes of D, paragraph 1, the term "small widebody" shall replace "757/767" and "A300."
- D. For purposes of D, paragraph 2, the term "All STL narrowbody flying" shall replace "All STL S80/717 flying." The preceding generic aircraft descriptions shall be defined in terms of gross weights.

5. APA Green Book pay rates effective 12/2/01.

6. AMR agrees to satellite language provided to AMR & APA during merger discussions.

7. This tentative agreement shall be reduced to writing and signed by the Presidents of the Organizations and the highest labor relations official of the Company.

If you agree with the foregoing description of our tentative agreement, please sign in the space indicated below and return a signed copy of the Agreement to me.

Very truly yours,



Captain Robert A. Pastore
Master Chairman
TWA MEC

ALPA 022076

Captain John E. Darrah
Captain Jeffrey Brundage
October 23, 2001
Page 3

<hr/> Captain John E. Darrah President Allied Pilots Association	<hr/> Date
--	------------

<hr/> Captain Jeffrey Brundage Vice President American Airlines, Inc.	<hr/> Date
---	------------

ALPA 022077

Exhibit S

10/23/2001 18:25 FAX 8173022119

APA EXECUTIVE OFFICE

FILE COPY

ALLIED PILOTS ASSOCIATION

O'Connell Building • 14600 Trinity Boulevard, Suite 500 • Fort Worth, TX 76155-2512 • 817.302.2115 • Fax 817.302.2119

Captain John E. Darragh
President

VIA FAX 314-770-8510; 8571
and 202-223-0723

October 23, 2001

Air Line Pilots Association (TWA-MEC)
Captain Robert A. Pastore, Chairman
500 N.W. Plaza, #1200
St. Ann, MO 63074

Dear Bob:

As you know, when our meetings in Washington, D.C. ended on the afternoon of October 22, we clearly reiterated that the APA Board of Directors was meeting beginning October 23 for the purpose of approving a seniority integration agreement between APA and American Airlines. We understand that AMR management subsequently advised you that, if the TWA MEC did not accept the seniority integration proposal pending at the conclusion of those meetings by 1300 CST on October 23, the Company would proceed to conclude an agreement with APA. We have now received your letter of October 23, which we received at approximately 1630 CST on this date. In your letter, you state that the TWA MEC has voted to accept the seniority integration proposal, but with additional conditions as stated in your letter.

Your letter arrived well after the deadline established by the Company and purports to place conditions on the MEC's acceptance of the proposal beyond those set forth in the proposal. We are gratified that the MEC has concluded that the pending seniority integration proposal is fundamentally acceptable. We made clear in our meetings, however, that we would proceed forward with American unless the proposal was accepted. In addition, as you know, the most significant conditions proposed in your letter would require the agreement of American Airlines management. However attractive some of those conditions might be to us, we understand that American has already advised you that they are unacceptable and that it will therefore not execute your letter.

O:\exepres\misc\102301 Pastore

ALPA 001857

P-344

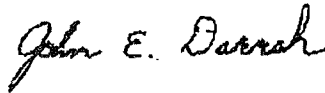
10/23/2001 18:25 FAX 8173022119

APA EXECUTIVE OFFICE

Air Line Pilots Association (TWA-MEC)
Captain Robert A. Pastore, Chairman
October 23, 2001
Page 2

Accordingly, it does not appear that your letter provides the basis for an agreement among the two pilot groups and American. Therefore, we intend to continue on the course which we identified at the conclusion of our meetings in Washington, D.C.

Sincerely,



Captain John E. Darrah
President

JED/sp

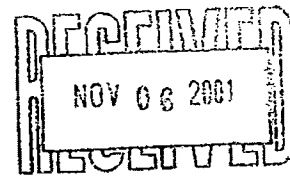
cc: Jeffrey J. Brundage

O:\exepres\misc\102301 Pastore

ALPA 001858

Exhibit T

American Airlines



FILE COPY

Jeff Brundage
Vice President
Employee Relations

October 24, 2001

Via Facsimile & FedEx
Captain Robert A. Pastore
Master Chairman, TWA MEC
Air Line Pilots Association
500 Northwest Plaza, Suite 1200
St. Ann, MO 63074

Dear Bob:

While I'm happy to hear that the TWA Pilots MEC accepted the APA's seniority integration proposal, the conditions outlined in your letter for an integrated seniority agreement are unacceptable to the Company.

I'm disappointed that we were unable to conclude an agreement that is acceptable to American Airlines, the Allied Pilots Association and Air Line Pilots Association.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jeff Brundage".

Jeff Brundage
Vice President
Employee Policy & Relations

cc: John E. Darrah – APA President

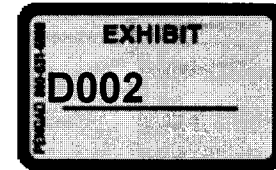
P. O. Box 619616, MD 5235, Dallas/Fort Worth Airport, Texas 75261-9616
Phone (817) 967-2266, Fax (817) 967-1843, Email Jeff.Brundage@aa.com

ALPA 001323

P-345

Exhibit U

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
38TH REGULAR BOARD OF DIRECTORS MEETING
October 16-20, 2000



AI#33

SUBJECT
Pilot Unity

SOURCE
President Duane E. Woerth

BACKGROUND INFORMATION
See Proposed Resolution.

PROPOSED RESOLUTION

WHEREAS the Mission Statement of the Air Line Pilots Association calls on ALPA "to represent, in both specific and general respects, the collective interests of all pilots in commercial aviation," and

WHEREAS the interests of the members of ALPA, as well as all airline pilots, will be materially advanced by the Association achieving its long-standing goal of truly becoming the unified pilot representative for the profession in the United States and Canada, and

WHEREAS political, policy and labor disputes of years past should not be permitted to result in continuing separate organizations for pilots of present and future generations, a situation which places the success of projects of the utmost importance to the profession at risk and from which management, industry governmental and global forces achieve real benefit, and

WHEREAS there have been discussions on ALPA representation with the IACP, representing the Continental and Continental Express pilots; and interest in ALPA representation has recently been expressed within other independent pilots' associations, including APA, representing the pilots of American Airlines, and FPA, representing the FedEx pilots; and the Canadian Airlines/Air Canada merger will shortly result in a representation vote, and

WHEREAS pilot unification within ALPA, bringing into ALPA the thousands of members of independent pilots' associations, will be a true victory over the

ALPA 019798

corporate forces that have sought to perpetuate division within the profession against the background of union busting tactics that have arisen since deregulation, and

WHEREAS opportunities to truly unify the profession within ALPA should be pursued without delay in a diligent and constructive manner,

THEREFORE BE IT RESOLVED that the Board of Directors, as ALPA's highest governing body, reaffirms the Association's longstanding objective to provide representation for all members of the airline piloting profession in the United States and Canada, including through merger of independent pilots' associations with ALPA by agreement, and

BE IT FURTHER RESOLVED that the President continue to actively pursue fulfillment of this goal, taking into account the following principles:

1. Discussions with independent pilots' associations, i.e., ACPA, APA, FPA and IACP, will be conducted through the President or his specific designee(s).
2. Members in good standing of independent pilots' associations which merge with ALPA by agreement will be offered ALPA membership.
3. Proposed merger agreements with independent pilots' associations will be subject to approval by the Executive Council and ratification by the Executive Board, in accordance with Article I, Section 11 of the ALPA Constitution and By-Laws.
4. ALPA representation campaigns and elections will remain available as a vehicle to be used in appropriate situations.

FINAL RESOLUTION

WHEREAS the Mission Statement of the Air Line Pilots Association calls on ALPA "to represent, in both specific and general respects, the collective interests of all pilots in commercial aviation," and

WHEREAS the interests of the members of ALPA, as well as all airline pilots, will be materially advanced by the Association achieving its long-standing goal of truly becoming the unified pilot representative for the profession in the United States and Canada, and

ALPA 019799

WHEREAS political, policy and labor disputes of years past should not be permitted to result in continuing separate organizations for pilots of present and future generations, a situation which places the success of projects of the utmost importance to the profession at risk and from which management, industry, governmental and global forces achieve real benefit, and

WHEREAS there have been discussions on ALPA representation with the IACP, representing the Continental and Continental Express pilots; and interest in ALPA representation has recently been expressed within other independent pilots' associations, including APA, representing the pilots of American Airlines, and FPA, representing the FedEx pilots; and the Canadian Airlines/Air Canada merger will shortly result in a representation vote, and

WHEREAS pilot unification within ALPA, bringing into ALPA the thousands of members of independent pilots' associations, will be a true victory over the corporate forces that have sought to perpetuate division within the profession against the background of union busting tactics that have arisen since deregulation, and

WHEREAS opportunities to truly unify the profession within ALPA should be pursued without delay in a diligent and constructive manner,

THEREFORE BE IT RESOLVED that the Board of Directors, as ALPA's highest governing body, reaffirms the Association's longstanding objective to provide representation for all members of the airline piloting profession in the United States and Canada, including through merger of independent pilots' associations with ALPA by agreement, and

BE IT FURTHER RESOLVED that the President continue to actively pursue fulfillment of this goal, taking into account the following principles:

1. Discussions with independent pilots' associations, i.e., ACPA, APA, FPA and IACP, will be conducted through the President or his specific designee(s).
2. Members in good standing of independent pilots' associations which merge with ALPA by agreement will be offered ALPA membership.
3. Proposed merger agreements with independent pilots' associations will be subject to approval by the Executive Council and ratification by the

ALPA 019800

Executive Board, in accordance with Article I, Section 11 of the ALPA Constitution and By-Laws.

4. ALPA representation campaigns and elections will remain available as a vehicle to be used in appropriate situations.

ALPA 019801

Exhibit V

#25



STL COUNCIL 003

INFORMATION UPDATE

BRIEFING #: 2001-09,

May 8, 2001



HELLO, THIS IS RON TAMACCIO, COUNCIL 003 COMMUNICATIONS CHAIRMAN WITH AN ALPA INFORMATION UPDATE.

TODAY IS TUESDAY, MAY 08, 2001.

IT'S 15:04 HOURS IN ST. LOUIS.

THERE ARE TEN ITEMS IN THIS BRIEFING.

1. AS ALWAYS, SAFETY FIRST!

In our last Update, we cited a few examples of how some of

our captains declare themselves experts in airworthiness requirements by not entering malfunctioning components or known deficiencies in the aircraft's logbook.

AS a follow on, we'd like to remind you that whenever you encounter any non-normal situation; be prudent and use all the resources available to you.

Don't proclaim yourself the on-site "expert," and start making decisions before you've had a chance to consult with the real experts.

Worse yet, don't ignore a bad situation hoping it will just go away.

The former is foolish, and the latter is just plain stupid!

Unfortunately, last week we had another in-flight engine failure.

The crew landed without incident, but, once again, failed to call anyone from ALPA's Safety Department.

We found out about it the next day.

Please remember, anytime you declare a flight segment "*non-routine*" per Chapter 6, Section VII, P., s., of the FOP; whatever happened to cause you to make that declaration is probably something ALPA needs to know about.

In some respects, our simulator training for these kinds of abnormal procedures sets us up for not following through with the necessary notifications.

In the sim, once we touch down, the event ends and we go on to the next one.

However, in the real world, when we experience one of these kinds of situations, the crew is put on Chief Pilot Hold (CHP) and the 21(A) inquiries begin immediately thereafter.

The first things you do or say are the very things that will have the greatest impact on the eventual outcome.

Don't start talking or writing until you talk to us!

Call 1-800-USE-ALPA.

2. INTEGRATION UPDATE.

Things aren't going well in our discussions with APA about how to integrate the TWA pilots into the American Airlines' Pilot Seniority List.

To date, both proposals from APA included a methodology whereby the most senior TWA pilot ends up somewhere below the middle of the current AA list, and more than half of the rest of the TWA group is stapled to the bottom.

Unlike Mr. Carty, the rest of AA's top managers, and many airline industry analysts, the APA's leadership still refuses to attribute any value to TWA's contributions to the transaction between the two airlines.

It's apparent to us that APA feels AA "saved" TWA from extinction, and absent that, we'd all be out of work.

So, from their perspective, we should be quite happy with APA's current offer.

Until their mindset changes, and APA's leadership recognizes how this transaction enhances the career expectations of its members, it's unlikely their negotiating position will change.

Nevertheless, our team is preparing a very detailed counter-proposal; based on a concept that does reflect the substantial positive contribution the TWA assets bring to AA's system, the company's "bottom line," and the career expectations of all its pilots.

Also, there's another *sub-rosa* aspect to this whole negotiation.

Since the pilots from Continental recently voted to rejoin ALPA, APA is now the only large, stand-alone pilots union in the US.

Its leadership just agreed to pay a \$49.5 million claim to AA management resulting from

APA's illegal sick out in February 1999.

The former Reno Air pilots are suing them and there's a group of AA pilots in a shadow union on their property.

All things considered, perhaps APA's leadership feels they must appear "strong" to their members in order to maintain their independent status and their position as bargaining agent for the AA pilots. It's no secret that ALPA would like to have AA back in the Association. We'll keep you posted as events unfold.

Because of scheduling conflicts, the next meeting between the parties will not occur until sometime later this month.

3. STAFFING REPORT.

What follows is from Gary Tritt, Acting Chairman of the System Schedule Committee.

The following information is for distribution to the pilot group.

First item concerns the future wide body displacement message. At this time there are no plans by

the company to post another wide body displacement bid message.

The current staffing of the wide body fleet is such that there is minimal overstaffing through the fall, 2001.

Second item concerns the 717 fleet. The company has created an aggressive June schedule for the 717 fleet that has resulted in excessive penalty time creating a situation whereby the crews available were not sufficient to fly the schedule. In an effort to reduce the crew requirements for June the result was a decrease in actual flying hours and very few 1 and 2 day trips for the fleet.

Third item again concerns the 717 fleet. Expect a bid message within the next month effective probably in August for 717 vacancies. We are requesting that all pilots, especially the DC9 pilots review their standing bids. If the company is unable to fill the 717 vacancies and there is an overstaffing of the DC9 fleet (a real probability due to DC9 aircraft being retired), then we can probably expect a displacement message for the DC9.

Fourth item. The company is in the process of completing their semi-annual review of the financial plan and will adjust the financial plan as required.

It is unknown at this time the specifics, however, considering the changes that have occurred in ownership and fleet size we expect to see changes, to what extent, we don't know. It is imperative that all pilots continue to review their standing bids.

Last item. When pilots have questions concerning their schedule, they should first contact crew scheduling. If your answer is not satisfactorily answered then your next step should be to contact your domicile for resolution.

If your problem is not answered satisfactorily, or you feel that this could be a problem to other pilots, please notify your Scheduling Committee representative, a Grievance Committee representative or your elected LEC representatives.

These representatives are listed on the MEC website. And again, have a question, just ask, we'll try our best to get an answer for you.

Gary Tritt

ALPA 000212

SSC Chmn, Acting

4. RETIREMENT PLAN OPTIONS.

Sometime last week, everyone should have gotten a letter confirming the amount of past-due company contributions, plus interest, made to your DAP account. The payments were made on April 19th.

These monies were the last contributions from any source, excluding rollovers, to the TWA DAP and 401(k) accounts.

All future TWA LLC retirement contributions and your personal 401(k) contributions will go to your new AA Super Saver Account.

Also in the letter was important information about the future of the DAP and 401(k) Plan.

It appears that the DAP will continue, as is, with a new sponsor. However the 401(k) Plan will eventually be terminated.

Please pay close attention to the directions for requesting a

distribution or rollover from either your DAP or 401(k) account.

Errors could have substantial tax consequences.

5. NEW MEC OFFICER.

The MEC elected Keith O'Leary to replace Scott Schwartz as its Vice Chairman.

Keith is a STL MD-8 Captain. He lives in STL.

6. MORE CHANGES ON THE MERGER COMMITTEE.

The MEC chose Captain D.J. Glasby to replace Captain Gary Flor on the Merger Committee.

Captain Flor left the committee for personal reasons.

The Merger Committee member are:

Captain Mike Day
Captain D. J. Glasby
Captain John Swanson
F/O John Hefley
F/O Sean Clark

7. ALPA PRESIDENT SPEAKS TO APA ABOUT TWA PILOTS.

What follows is an excerpt from ALPA's President, Captain Duane Woerth's comments to the TWA MEC and ALPA members present at a Special MEC meeting on April 23, 2001.

Addressing the current issues facing TWA pilots specifically, Captain Woerth said that as an ex-Braniff pilot he was happy that TWA pilots had hung on to get to the point we are. The Association's focus now is on obtaining a fair seniority integration for the TWA pilots, he said.

Captain Woerth reported that earlier this month he traveled to Dallas with the intention of speaking to the Allied Pilots Association Board of Directors about the TWA pilots' seniority integration. Although the APA did not guarantee that Captain Woerth would be allowed to speak to the APA BOD, he went with the hope of receiving an official invitation. That morning, APA President John Darrah contacted Captain Woerth with that invitation. This would be only the second time since APA was formed that a sitting ALPA

President had been able to officially address the APA BOD, according to Woerth.

During his discussion with the APA, Captain Woerth said that this transaction would mark the first time in the American pilots' careers that they would have to deal with integrating a large airline with a long history. He said this transaction is different than Reno or Air Cal and the APA must realize that and be fair in their negotiations.

He went on to tell the APA that the TWA MEC had recently made one of the hardest decisions he has ever seen any MEC make in reaching the transition agreement with TWA Airlines LLC. Captain Woerth said that the TWA MEC had made a realistic assessment of their situation and made the hard decision, and now the APA needs to get realistic and make a hard decision.

He told the APA that they have an even greater responsibility to be fair and realistic since they would not allow a third party to facilitate the negotiations. (NOTE: Subsequent to Captain Woerth's meeting with the APA, they agreed to the use of a facilitator if needed.)

Captain Woerth told the MEC then that he would send a letter to the TWA pilots and others to be sure they all know what his position is. Captain Woerth pledged the financial support of the entire Association for the TWA pilots. In light of losing the 9,000-hour flight pay loss bank previously negotiated with TWA, Inc., Captain Woerth assured the MEC and other members present that the TWA MEC will be provided the funds and other support necessary from ALPA to process MEC activities.

Capt. Woerth stated that they would look at the TWA MEC's financial needs quarter by quarter without micromanaging the MEC.

This is a unique situation - we are going to take care of business, he added.

Question and Answers
(paraphrased and condensed):

Q: What is APA's status with regard to the AFL-CIO?

A: The APA has been trying to get into the AFL-CIO for a long time, and they have not been successful. They need to be true members of the labor movement if they want the political support and

clout that goes along with a national union.

Q: What did you think of the APA's latest proposal?

A: I saw their first proposal, and when they said they had a better one I certainly thought it would be better than that. I found it highly unsatisfactory.

Q: Do we have your commitment to use the resources of ALPA, including litigation, to ensure TWA pilots are integrated fairly?

A: If we have any basis for litigation, we will do what is necessary, including litigation. We hold the bargaining rights-we don't need MCF for litigation.

Q: What is your assessment of the APA Board of Directors? How did they receive you?

A: When I was in front of them, it was a very controlled group. There are less than 20 members on the BOD, out of which maybe two are approaching 50 years old. Frankly, in that way they don't look all that different than any MEC. Their Vice President is an ex-Eastern pilot; however, since American growth has been mostly through internal expansion and

the APA has never been through a large merger like the rest of ALPA's MECs, they are struggling with how to do this.

Q: Are you of the opinion that an integration that is not fair to the TWA pilots will have long-range consequences for the industry and American Airlines going forward?

A: I think that's obvious. This transaction results in the largest airline with the largest pilot group. What the rest of the world's pilots will be counting on is for this combined group to have the unification and strength to do their job in negotiating their next contract. We need leading edge companies with leading edge contracts. The biggest airlines can raise the bar for everyone. If one big airline does not, then it negatively impacts the rest of the pilots in the industry.

The consequences of not doing the right thing are serious. The APA can use the addition of the TWA pilots to strengthen their position. If not, with a hostile political environment and an aggressive management, they might stay a notch below where they need to be. They need to be aware of the long-term consequences of what they do.

Q: Is there anything that you can do to assist the five pilots who have not been offered employment by American Airlines in the TWA LLC?

A: Bob Pastore and I will talk to Don Carty before any decision is made to be sure he understands all the issues involved.

Q: What influence do you think Don Carty has with the APA? Is there any assistance we can get from him?

A: We have an open dialogue with him. How effective he will be, I'm not certain. He has a hard time reaching a deal with his own pilots. If he doesn't want to look like the dumbest CEO in the industry he's got to do this right.

Q: Why did ALPA not choose to sponsor the pilots' DAP?

A: If we agree to sponsor one, we would have to be prepared to take on more. We simply don't have the resources to take on that kind of liability.

Q: What's the status of the fine levied against the APA as a result of their sickout in 1998?

A: I don't think Don Carty is going to make them write a check for something when they don't have

it. I don't know what he will tell the judge.

The members applauded Capt. Woerth at the conclusion of his remarks.

8. AA EXECS MEET WITH TWA LINE PILOTS IN STL.

Captain Rick Crocker provided this summary of the "Meet & Greet" session with AA managers in STL on May 3^d.

The representative in attendance for AA were:

Capt. Bob Kudwa: VP Flight Operations

Jeff Brundage: VP employee relations

Capt. Eric Lewis: Managing Director (I believe of Flt Ops)

Capt Kudwa opened up the session with a few comments:

The TWA/AA combination places AA ahead of UAL strategically and puts UAL in a position of trying to find a way to counter what AA has done.

TWA runs an outstanding airline.

He wants everybody's motto for this merger to be "treat everybody like you want to be treated."

They do most of their company communication over their website.

They have access to Sabre from the website (you will no longer have to maintain a CompuServe account).

There were a few more comments but they are the same things we have already heard a 100 times. The rest of the statements were from the question and answer portion.

Someone asked about the potential loss of 60 A/C. He said they plan to move A/C out of LLC only to match the retirements of LLC pilots. Most of the A/C transfers would happen to A/C whose leases run out.

The future of the B717 depends on Boeing. They were offered a deal to replace every F100 with a B717. The returned F100's would not be used in the states. The deal got a little cloudy when they were going to have to include the extra F100's coming from USAir.

The drop dead last possible date to be LLC is 12/31/04, but the LLC could disappear sooner.

Part of the delay in figuring out fleet plans and training issues was that they couldn't look at everything until the bankruptcy judgment was final (antitrust laws prohibited it).

If at any point there is an excess of pilots in the LLC they will be able to move across the fence (instead of being furloughed) based on whatever is agreed upon for our seniority integration.

The first noticeable change to our A/C is going to be the seats -- were going back to comfort class.

There will not be disposal of TWA a/c. They do not plan to replace 180 a/c unlike the Reno acquisition were they are replacing all of the a/c.

His comment on seniority integration is that it's "like everyone showing up to the dance with two dates but you are still worried about losing your girlfriend."

AA will not accept a proposal from APA that creates large costs.

Management is neutral on the position of seniority integration.

They would like an integration process sooner rather than later.

NO ONE WILL BE DISPLACED. He said that they do not have a displacement program and that as long as no one bids out of their seat they should not be forced out.

On their upgrade or out policy he said it is not their intention to eliminate people, in fact he thought we had a stricter policy.

When do we train to AA procedures? It will be slow integration followed by some sort of FAA requirement. They have no idea at this time what is exactly going to be required.

Are we a pawn in the upcoming Section 6 negotiations? We don't plan to use LLC as a pawn either way in negotiations.

They want the integration done quickly. "This has got to be done right from the people side, people issues are very important."

Any plans to change our domiciles? No changes currently, they plan to keep things status quo at the co-located domiciles.

They do NOT want another integration like Reno. They were not happy with the way the labor portion of the Reno integration worked out.

They thought the Air Cal integration went smoothly and like the easy way that integration of work forces took place.

Based on current staffing if we went to AA work rules there would be a significant shortage of LLC pilots.

We will be on AA pay and benefits NO LATER than 1/1/02.

Pref bid will be dead 12/31/01.

The type of flights using STL will be focused on connecting traffic so they can utilize ORD for more O&D traffic. They do not see an immediate increase in our international flying out of STL, they are still trying to get landing slots in NRT for the route authorities they have so don't look for a STL-NRT route anytime soon.

LLC new hires will be hired by A/A and then allotted to LLC, as LLC needs new pilots. They are currently looking into the status of the pilots in our pilot pool.

When will we get new uniforms? They have not set a date yet but would like it sooner rather than later.

They are currently working on who is going to be our feeder in STL.

When will we be eligible for profit sharing? LLC pilots will not be eligible for a profit sharing check for the year 2001 but should be eligible after that.

What is the status of the LLC5? They are currently still reviewing their legal issues and hope to have it resolved soon. It is now the LLC4 because one pilot has already been returned to the list.

These above comments are only my perception from my notes of the meeting.

Hope this helps those that want more info.

Rick

9. A MESSAGE FROM OUR COUNCIL'S NEW SECRETARY/TREASURER

Fellow Council 3 Pilots

I have just recently been able to obtain the email addresses of those pilots in Council 3, that have them on file with TWA ALPA. This was not an easy task with all the red tape involved.

As I have committed to a better line of communication with you, I will begin to give you EMAIL updates as to our progress with APA in the coming days, weeks and months.

You can also store my email address; so in the event you have any questions, feel free to email me. I will do my best to respond appropriately to those questions. In that, I will say that there may be times that I will not be able to be specific about sensitive issues that have to do with Strategic Planning Issues with the APA

This will be in your best interest in the long term. You may ask why? The answer is simple and to the point. Information that is often in the planning stage is not complete nor is it appropriate to communicate it if it may jeopardize the plan before it even gets started.

Often EMAILS and general postings have found themselves in the hands of the APA and being

counteracted to our Merger Committee, at their surprise. This is a tremendous problem that hurts the TWA pilots and your MEC's fight to seek a fair and equitable integration of the seniority list.

It is incumbent upon each one of us to understand this process. I ask that each of you take it upon yourself to limit your Internet and ALPA Board communication of items that may not already be released by ALPA.

I will also state, if ever in the future I feel that this process has a flaw or seems to be going down the wrong path, I will immediately communicate this to ALL C3 Pilots.

Those that represent you in ALPA are to be held accountable for their actions, this includes me. If you ever doubt their actions or their intent, it is perfectly within your right, to question their motives and their actions or lack thereof.

I am still committed to seeking (DOH) or it's equivalent for the TWA pilot's.

I will be putting a briefing together in the next 24 hours to bring as

much of you up to date as possible.

Again, please feel free to email me at anytime.

Fraternally,

Jim Arthur

C3 Secretary/Treasurer

STL MD80 Captain

TWAC3JIMARTHUR@CS.COM

10. A SPECIAL FRIEND APPROACHES RETIREMENT.

Our Chief Pilot will retire on May 24th. Captain Magnuson has served us well during his tenure as our "boss."

He's an outstanding example of the true spirit of enlightened, customer-oriented management.

Lee's unique style and genuinely caring approach to his responsibilities has, on more than one occasion, resulted in preserving a fledgling pilot's flying career that was in serious jeopardy.

His successor will have a difficult time following such a fine manager.

Before he retires, please try to stop by or send him a note to wish him well.

**THAT'S ALL FOR NOW.
LOOK FOR OUR NEXT
UPDATE SOMETIME LATER
THIS MONTH.**

**THANKS FOR CALLING
WATSON.**

GOOD BYE.

The preceding information is a verbatim transcript of a TWA ALPA Council 003 Code-A-Phone message. The messages are updated frequently. Each message is prepared by Captain Ron Tamaccio and is sequentially numbered to provide continuity. The recording is available around-the-clock by calling WATSON at 314-426-1011.

ALPA maintains an office in the STL airport terminal. It's located in room MTS-2267, on the lower level in the corridor behind the rental car counters between exits MT-14 and MT-15.

The office is open weekdays from 0800 to 1600. The telephone number is (314)-426-1789. The FAX number is (314)-426-7295.

The mailing address is:
Air Line Pilots Association,
P.O. Box 10277,
SAINT LOUIS, MISSOURI 63145

ALPA 000221

**HERE ARE SOME
IMPORTANT TELEPHONE
NUMBERS.**

YOUR Captain Rep:
Steve Rautenberg,
(636) 561-4884

YOUR F/O Rep:
Sally Young,
(636) 561-1621

YOUR Secretary/Treasurer:
Jim Arthur
(314) 422-9518

**MEC Safety Reporting Voice-Mail
System:**
(800) USE ALPA
(314) 770-8556

**ALPA Worldwide Safety & Accident
Investigation Hotline:**
(202) 797-4180
CALL COLLECT!

MEC Code-a-Phone:
(800) 253-7919

MEC Office:
(314) 770-8500

MEC FAX:
(314) 770-8510/8597

MEC Benefits Specialist
Mary Ulett (314) 770-8500

DAP Office:
(314) 739-7373

DAP NAV Update:
<http://resources.hewitt.com/4t>

wadap.
DAP Information:
(877) 4TWADAP

CCS Hotline:
(800) 388-7665

TWA Info Line:

(800) TWA-1976
Council 002 CDP:
(800) 253-7928
Council 004 CDP:
LAX & SFO: (800) 887-1821
TWA Flight Information:
(800) 893-5436
TWA Non-Rev VRU System:
(800) 449-3833

American Airlines Info Line:
(800) 222-2789

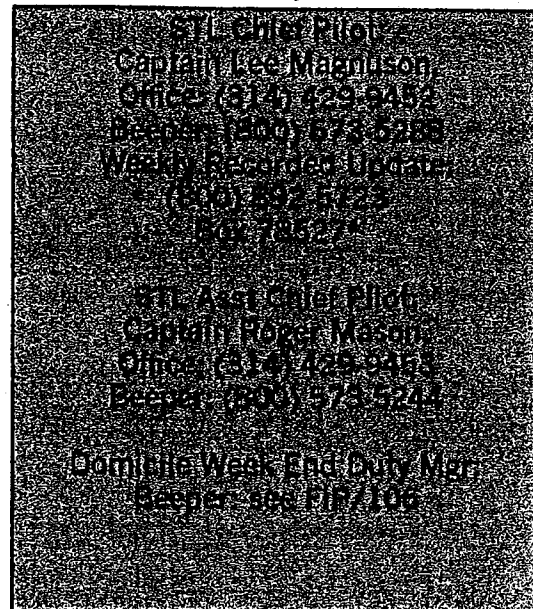


Exhibit W

TWA MEC Minutes



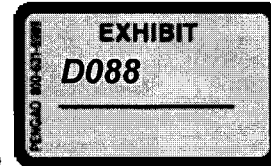
Written, edited and published by your TWA Master Executive Council, these minutes provide a record of the business conducted during the representative body's last meeting. This document is not a verbatim transcript of the meeting's reports, discussions and actions. Rather, it is a comprehensive summary of those events. For more information on the issues influencing TWA pilots' careers, consult the TWA MEC's other various communications.

SPECIAL MEETING DATE: October 20-22, 2001 Washington, D.C.

MASTER EXECUTIVE OFFICERS

Robert A. Pastore, Master Chairman

Keith J. O'Leary, Vice Chairman



COUNCIL 2 - NY

Howard B. Hollander, Captain Rep.

Theodore A. Case, First Officer Rep.

COUNCIL 4 - LAX/SFO

Pablo Lewin, Captain Rep.

Alan Altman, First Officer Rep.

Glenn Stieneke, Secretary/Treasurer

COUNCIL 3 - STL

Steven P. Rautenberg, Captain Rep.

Sally D. Young, First Officer Rep.

Jim Arthur, Secretary/Treasurer

Saturday, October 20, 2001

1000 Captain Bob Pastore called the meeting to order.

Vice Chairman Keith O'Leary called the roll.

In attendance: Hollander, Case, Young, Arthur, Stieneke

Not In attendance: Rautenberg, Lewin, Altman

Proxies: None

Committee members: Ron Kiel, Keith Holcomb, Bud Bensel, Matt Comlish

Announcements

1001 Recess

Case for the read Article 1 Section 14 from ALPA's Constitution and By-Laws:

Representation of all members of the Association at any duly called meeting of the Board of Directors, Executive Board and Master Executive Council is mandatory. Elected representatives may be considered as acting against the best interest of the Association if they fail to represent, or arrange for representation of their constituents.

Case also requested that Pastore notify Woerth regarding members attempt to deny quorum.

Pastore stated he thought this was a postponed regular meeting. Holtzman stated that it would be a stretched to say this was a regular meeting. Additionally a 24-hour notice was given that this was a special meeting.

Pastore Ex
88

1014 Pastore adjourned meeting for lack of quorum.

Pastore called for Special MEC meeting for 10:30, Sunday, October 20.

Sunday, October 20, 2001

1030 Master Chairman Bob Pastore called the meeting to order.

Vice Chairman Keith O'Leary called the roll.

In attendance: Hollander, Case, Rautenberg, Young, Arthur, Altman, Lewin and Stieneke

Committee Members: Bud Bense, Matt Comlish, Ron Kiel, Keith Holcomb

Announcements

Pastore reviewed the agenda for the meeting. Also discussed Jeff Brundage's letter to Duane Woerth. Pastore said he spoke directly with Brundage to clear up some of the discrepancies in the letter.

Holtzman briefed the MEC regarding Dispute Resolution Committee grievances. These are handled by the DRC committee, the MEC is not involved.

Case for the record: "I have been made aware of at least two letters written by Duane Woerth, President of ALPA. One, intimating that this TWA MEC intends to depart from the TWA MEC Policy Manual with regard to the seniority integration discussions with the APA which began on October 20, 2001. For the record, this MEC member has no intention of taking any such action.

The other, concerns Special MEC meetings and a reiteration of intimations about the TWA MEC's conduct with respect to the seniority integration discussions with the APA. I am very concerned about the intimidating language of both letters. Because of the failure of this MEC to meet prior to the seniority integration engagement, this MEC has allowed non-Merger Committee members into the room for direct negotiations, which may be in violation of the TWA ALPA MEC Policy Manual. For the record, I object to this action. I am not quite sure how I am to continue representing my constituents with these letters in effect."

1045 Briefing from Captain Howard Attarian, ALPA Executive Administrator (via phone)

Captain Howard Attarian addressed the MEC regarding the recent seniority integration meetings between ALPA and APA. Also discussed several communication strategies.

Questions and Answers

1058 Briefing concluded.

1059 Protocol Discussion for the Merger Committee

Case/Altman moved to enter into Committee of the Whole

VOTE: PASSED unanimous voice vote.

1108 Recess

1125 Reconvened

Hollander requested that the record reflect that Rautenberg, Lewin and O'Leary were not present.

1130 O'Leary and Lewin returned to the meeting.

1131 Rautenberg returned to the meeting.

Legislative Committee Report: Matt Comlish

Comlish briefed the MEC regarding the legislative efforts during the past few weeks. Grass roots campaign has been very successful, receiving a lot support on Capital Hill. Suggested that the MEC plan for the upcoming weeks. Comlish said that tomorrow would be the most critical juncture. Recommended developing public relations campaign and get something released with press today. He said he would like to see more of the rank and file getting involved. Comlish suggested that keeping the pressure on and asked the MEC to stay in DC to help with the campaign. Also need to educate the pilots so they participate and work together as a team. Expressed concerns that ALPA has not been supportive in either the political or public campaigns. If this fails, it is because of lack of support from ALPA National.

Questions and Answers

1206 Recess

1214 Reconvened.

Questions and Answers continued.

1222 Report concluded.

1223 Case/Hollander moved to come out of Committee of Whole.

VOTE: PASSED unanimous voice vote.

AI# 0110-118 Case/Hollander

SUBJECT: TWA ALPA legislative initiative.

WHEREAS the TWA ALPA Governmental Affairs Committee has experienced an extraordinary level of success, and been instrumental in placing a Bill on the floor of both the U.S. House of Representatives and U.S. Senate, and

WHEREAS those Bills, Senate (S.1479) and companion House (H.R.2989), are specifically designed to allow for 3rd party neutral arbitration, for a resolution to the TWA / ALPA, American / APATWA LLC's seniority integration, and

WHEREAS those Bills are a direct result of the work of the Governmental Affairs Committee as augmented by certain members of the MEC, now

THEREFORE BE IT RESOLVED that the TWA MEC augments the TWA ALPA Governmental Affairs Committee by placing the following members on the Governmental Affairs Committee to include the entire MEC: Howard Hollander, Ted Case, Sally Young and Jim Arthur.

Discussion

1228 Lewin/Case moved to POSTPONE until after the Merger Committee report and the conclusion of the legislative report.

VOTE: PASSED voice vote.

Merger Committee Update: Mike Day

Briefed the MEC regarding ongoing meetings with APA.

1246 Report concluded.

MEC discussed whether to call a Special Meeting or move a late agenda item to deal with any merger proposals.

Arthur suggested that the MEC stay the course that we assured Senator Bond, the MEC would follow.

1255 Recess

1316 Reconvened

Representational Structure Report: Bill Kientz

Kientz updated the MEC regarding representational structure. Most likely TWA would fall under the American West concept. The MEC would need to make a request to the Executive Council. Kientz suggested that the MEC make two requests, first dealing with the next four months, then to deal with the next election cycle. The MEC could request to keep the current officers until the next election cycle. Recommend whatever the MEC decides, it be unanimous. Some MEC members have suggested seniority-based representation. Under this structure there would be seven status reps, with 300 pilots per rep. Kientz said he talked to the American West Master Chairman and they were not happy with their setup. It works, but doesn't work well.

Questions and Answers

1345 Report concluded.

1346 Recess

1408 Reconvened

Rautenberg/Young moved to consider any seniority integration proposal or tentative agreement submitted to the MEC by the TWA MEC Merger Committee.

Discussion

VOTE to consider any seniority integration proposal: **PASSED** voice vote.

Representational Structure Discussion

Young/Hollander moved to into Committee of the Whole.

VOTE: **PASSED** unanimous voice vote.

Per Pastore, no minutes were recorded during the Committee of the Whole.

1456 Recess

1516 Reconvened

Hollander moved to come out of Committee of Whole.

VOTE: **PASSED** unanimous voice vote.

Representation Structure discussion continued.

MEC agreed that representation would be status quo but agreed to wait until the body heard from Salverson to see if the Executive Council would pass status quo.

Communications Update: Keith Holcomb

Briefed the MEC regarding press conference and his discussions with Don Skiados, ALPA, Director Communications.

1647 Recess

1700 Reconvened

1701 Recess until 20:00pm

20:00 Reconvened

20:01 Recess

2020 Communications Committee Report: Keith Holcomb

Briefed the MEC regarding press conference and rally. Rally has been delayed but press conference will go on as scheduled. Skiados was ready to assist us.

Negotiating Report: Ron Kiel

Kiel updated the MEC regarding meeting with Brundage. Briefed the MEC on preliminary negotiations.

2039 Recess

2044 Reconvened

Representation Structure: Bill Kientz

Updated the MEC with regarding conversation with Captain Jerry Mugerditchian, ALPA, Vice President Administration. Mugerditchian said that anything was possible. Kientz said that there was a possibility that TWA could keep the current reps with seniority block. Recommend that the decision stay within the confines of the Constitution and By-Laws.

2055 Recess

2109 Reconvened

Merger Committee Update: Sean Clarke

Updated the MEC on the latest proposal from APA.

Questions and Answers

2127 Updated concluded.

2128 AI# 0110-119 Case/Altman

SUBJECT: TWA ALPA Representational Structure

WHEREAS the tragic events in early September have caused unprecedented issues to be dealt with by the Air Line Pilots Association, and

WHEREAS the TWA ALPA representational structure has the proven ability to remain adaptable and innovative concerning union representational duties, and

WHEREAS TWA LLC is caught in middle of the largest airline merger in history, and

WHEREAS the TWA MEC and ALPA is faced with the largest air carrier seniority integration in history, and

WHEREAS it is vitally important to maintain basic governing principles and stability for the purpose of adequately representing the interests of the TWA ALPA pilots, including representation for pay and working conditions, and

WHEREAS TWA LLC will collapse into a single Council airline with more than two thousand (2000) active members, which will tax the MEC beyond it's representational capacity, now

THEREFORE BE IT RESOLVED that to provide a organization structure for the continued governance and representation of TWA pilots the TWA MEC requests the Vice President – Administration/Secretary to coordinate with the ALPA Executive Council to adopt and administer the following requests:

1. Provide a temporary vehicle to maintain the current duly elected TWA MEC status representatives as the "status quo" for the purpose of adequately representing the TWA pilots. This vehicle shall expire upon the normal election cycle beginning March 01, 2002.
2. The MEC requests that the ALPA Vice President-Administration/Secretary coordinate with the ALPA Executive Council to provide a vehicle to maintain the TWA ALPA MEC Officers who are in place on October 31, 2001 until the normal election cycle.

Discussion

2237 Case/Altman moved to POSTPONE until after Kientz's briefing tomorrow.

VOTE: PASSED voice vote.

Captain Duane Woerth and Captain Howard Attarian (via phone)

Discussion regarding APA's latest proposal.

2253 Recess.

Monday, October 22, 2001

0900 Master Chairman Bob Pastore called the meeting to order.

Vice Chairman Keith O'Leary called the roll.

In attendance: Hollander, Case, Rautenberg, Arthur, Lewin, and Altman

Not In attendance: Young and Stieneke

Proxies: None

Committee members: Ron Kiel, Keith Holcomb, Bud Bensel, Matt Comlish

Announcements

0909 Recess

0918 Stieneke arrived at the meeting.

0920 Young arrived at the meeting

1015 Recess

1030 Reconvened

Lewin/Hollander moved to accept AI#0110-120 as a late agenda item.

VOTE: PASSED voice vote.

AI#0110-120 Young/Rautenberg

SUBJECT: Parker Dues Deferral

Discussion

Resolution #01-97 by S. Young/S. Rautenberg

BE IT RESOLVED that the TWA MEC approves a two-month period for repayment of 1999 dues/service charge reconciliation for Charles Parker.

PASSED voice vote

Case for the record: Abstained from voting because he did not have enough information to make a decision.

1040 Recess

1100 Reconvened

1103 Altman/Case moved to go into Committee of the Whole.

VOTE: PASSED unanimous voice vote.

Pastore requested no minutes be recorded.

1132 Recess

1148 Reconvened

MEC discussed the agenda and representation structure.

1153 Working lunch that included briefing from the Merger Committee. No minutes recorded per Pastore's direction.

1315 MEC discussed the briefing from the Merger Committee and asked numerous questions of Roland Wilder.

1347 Recess

1349 Reconvened

PAGE - 7

Never Approved by the TWA MEC

ALPA 006392

D-088

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MEC discussion continued.

Tanner shared his opinion regarding the recent proposal; felt it was a step south. The restrictions were not as favorable as the APA had offered earlier.

Lewin requested that the full details of the deal be given to the body for review before he could make a decision.

Rautenberg also requested the deal be reviewed in its entirety before he could reach a decision. Felt he did not have enough information to even consider voting. Rautenberg said he felt that the MEC was in no position to even contemplate this issue, need all the experts to advise us.

1420 Government Affairs Update: Matt Comlish

Comlish updated the MEC regarding efforts on Capitol Hill. Trevor Blackaan from Senator Kit Bond's office informed Comlish the reason no one from their office would be present during the negotiations was to avoid the appearance of interfering. Comlish said he found it odd that Norma Kaehler, AMR Vice President, Government Affairs, was on site today. He said that she had met with him and Bud Benseal and asked a few questions regarding how negotiations were going and how ALPA was being treated. Comlish emphasized the tremendous importance of keeping the legislation effort going.

Questions and Answers

1435 Caucus

1438 Update concluded.

1439 Merger Committee Update

Day briefed the MEC regarding the meetings with APA. Discussion focused on furloughs.

Day's briefing was set aside in order that the MEC receive a briefing from Paul Hallisay, ALPA Director, Government Affairs.

1443 Briefing from Paul Hallisay, ALPA Director, Government Affairs (via phone)

Hallisay discussed the MEC's recent legislative efforts. Stated that he felt that even if the Bill passed in the Senate, it would not pass in the House. Although efforts to this point have been somewhat successful the Bill would never come to the floor, this issue was very controversial.

Questions and Answers

1449 Briefing concluded.

1500 Merger Committee Update: Mike Day (continued)

Day suggested that the MEC hear from Jeff Brundage, AMR, Vice President Employee Relation regarding the recent proposal.

MEC agreed to hear from Brundage.

Kientz briefed the MEC on Brundage's background while he was at ALPA.

1504 Discussion with Jeff Brundage, Vice President Employee Relations, American Airlines (via phone)

Brundage stated that there were some options. If there wasn't an agreement, things would remain status quo. AMR has tentative language with APA and will file for single carrier status. AMR has said from day one they want to be a single carrier. The other option was arbitration. Brundage stated Don Carty told Senator Bond if the Bill passed, he would shut down TWA LLC. AMR made a commitment to its employees, right or wrong. AMR employees cannot fathom an arbitrated seniority list. AMR committed to its employees that AMR would not support arbitration for seniority. If the Bill passed, AMR would shut down the TWA LCC, cannot afford to upset the apple cart. Brundage said that Delta was going to be very aggressive, that was why we want to be in position to compete. The other piece was litigation; certainly an option. AMR doesn't share the same opinion with ALPA of what we signed up with back in Delaware. We have done what was reasonable to facilitate the process and feel it will stand up in court. Final option was to make a deal. Brundage said he would not answer whether or not this was a fair deal. There has been little success of fair integration among major carriers. He has not seen and integration where all parties were happy in the end, understood that this was an emotional issue. AMR will do everything it takes to become the number one airline. This was a lousy place to be, but that is where we are.

Questions and Answers

1620 Discussion concluded.

1621 Recess.

1639 Reconvened

Pastore announced that Day made a commitment to Ed White that nothing would be released to the press until close of business tomorrow. Day said that he had no problem calling White and telling him the deal was off.

Day reviewed in detail the proposal.

Questions and Answers

1725 Recess.

1729 Reconvened.

Questions and Answers

1740 Hollander left the meeting, Hollander proxy to Case.

1744 Lewin left the meeting, Lewin proxy to Altman.

1757 Lewin arrived at the meeting.

1830 Recess

1842 Reconvened

TWA ALPA Representational Structure Discussion

Pastore announced that he gave his proxy to Kientz to attend the Executive Board. He recommended that he would like to see the most Reps possible.

Kientz briefed the MEC regarding prospect of status quo. ALPA has stated that they are going to be flexible on this because of the current circumstances. He read from the ALPA Constitution and By-Laws regarding organizational structure. There were several options, but recommended block seniority representation for the interim. The MEC needs to be unanimous on this decision.

Questions and Answers

Rautenberg for the record requested the following be read to the Executive Council: *I understand that the Executive Council will be considering the request of the TWA MEC on representational structure at its meeting this week. I have abstained from voting on that recommendation in order to facilitate cooperation among the members of the MEC at this critical juncture. However, I do believe that the Executive Council should be aware of the most serious reservation that prevents me from outright support of our request.*

I am writing to communicate my concern and ask that you share it with the Executive Council members as they consider our representational situation. A vacancy was created in the Council 2 First Officer Representative position on August 10, 2001. That vacancy was created by recall. The vacancy was filled on an interim basis soon after. However, to my knowledge, the election process for the secret ballot of the membership to elect the representative to serve the remainder of the term has not begun. I cannot endorse the failure of Council 2 to begin that process by scheduling and holding the nominating meeting. Subsequent to about September 28, when TWA announced its intentions to close the JFK domicile, the failure to hold nominations is understandable. However, the expiration of seven weeks between the recall on August 10 and the announcement of domicile closing at the end of September with no nominations being scheduled or conducted is in my opinion highly inappropriate. That is aggravated by the fact that Council 2 did in fact find it possible to conduct a meeting for the purpose of electing an interim representative. Nominations could have been held at that time.

The potential addition of four months to an interim representative's term that should already have ended is a circumstance that I cannot support.

Thank you in advance for communicating this to the Executive Council.

Rautenberg for the record said that if the Council #2 election been conducted, he would have supported the status quo motion.

1924 Caucus

MEC reviewed press release.

Kientz recommended that MEC do a straw poll regard representation. He would take their decision to Bob Salverson and Jerry Mugerditchian to write the resolution.

1942 Recess.

Tuesday, October 23, 2001

0900 Master Chairman Bob Pastore called the meeting to order.

0901 Recess

0945 Reconvened

Vice Chairman Keith O'Leary called the roll.

In attendance: Case, Rautenberg, Young, Arthur, Lewin, Altman and Stieneke

Not In attendance: Hollander

Proxies: Hollander proxy to Case

Committee members: Sean Clarke, John Swanson, Matt Comlish, DJ Glasby, Bud Bensel, Mike Day

Guests: On file MEC office

Announcements

Merger Committee Report: Mike Day

Day stated that if there were better furlough protections, the Merger Committee would agree to the deal unanimously. Pilots that were now furloughed were definitely at risk. Day didn't believe there was a chance for litigation or the Bill passing, only leverage was to continue to delay. He said he was not trying to sell this, the Committee tried to get unanimous consensus. The Committee can only recommend this with certain conditions.

Swanson stated if that the captain upgrades were based on retirements rather than the economy. With the deal, recall rights would maintain April 10 seniority number, but if the pilot stayed in STL would maintain current seniority and would be able to move up to captain sooner than anywhere in the system. Recall could be anywhere there was an opening, but as soon as there was an opening in STL, the TWA pilot would get it before any AMR pilot.

Day reminded the body that quality of life is not an issue for APA pilots; they only care about the money.

Swanson stated that the MEC agrees not to take the deal; the TWA pilots would loose about 400 numbers in their seniority number. Doesn't seem a lot right now, but later in their career it will. Also, TWA pilots would be recalled to the bottom of APA seniority list.

Questions and Answers

1022 Recess

1040 Reconvened

Glasby stated that the MEC must do what was the best for all the TWA pilots. He was opposed to the deal; this was not integration but isolation. This was the best deal the Committee could get; APA was not going to give anymore. The upside of voting this down was very small. The litigation was not going get us better seniority; the legislative option was dead. Glasby also felt that the airline was going to be shrunk considerably. If the MEC agreed to the deal, it would protect some 1000 pilots. If don't accept, all pilots would be at risk.

Clarke said if there was furlough protection, he would not be for the proposal but he would be neutral. He thought there was a miss conception that if we don't accept the deal that we will loose 400 numbers on seniority, there was a shot that this won't happen. Briefed the MEC on the mitigation package. The APA already believes that anyone hired by the April 10 date has furlough protection. Clarke said that the

TWA pilots were the mitigation package whether we take the deal or not. Clarke hoped that this group would not sell out 1200 pilots to save their own butt. We don't have to come to a deal, there would be some risks. He couldn't believe anyone on the Merger Committee could sign a deal that was going to furlough 1200 pilots. We are here to prevent furloughs, not to voluntarily sign up for furloughs, and that would be what you will be doing if you accept this deal.

Wilder stated he was here to advise the MEC on the law and to help them get where they decided to go. Injunctions were being prepared against the single carrier filing. In order to get to arbitration all the pieces have to fall in line. First, the MEC must stop AMR from reaching an agreement with APA and then file injunction on the single carrier filing. This would only be a short delay, but cannot stop them from doing this eventually. ALPA needs to win the grievance with Richard Block, on fair and equitable process for integration. If ALPA wins the grievance, need to get a specific remedy. The next step if ALPA prevails would be to file suit to make sure the award was enforced. Next ALPA would need to work on improving the deal. During this period, ALPA would need to continue the legislative front with Senator Bond. During this period, there was nothing to prevent furloughs. Depending on the economy, if the traffic doesn't return, AMR would take it out of our hides. Wilder didn't see any legal protection to prevent AMR from furloughing heavier on the TWA side. He saw the fight going on through the first of the year. If ALPA obtained arbitration, it would be about 120 days for the arbitration. This would be a period of vulnerability. As in any war, there would be casualties. If ALPA doesn't take the deal, APA and AMR positions are that furloughed TWA Pilots would be recalled after all APA pilots.

1122 Recess

1142 Reconvened

MEC reviewed letter to APA to accept the proposal.

Rautenberg/Lewin moved that the letter to APA be issued as written.
Discussion

Case/Young moved to POSTPONE motion by Rautenberg/Lewin until 1230.
Discussion

VOTE: PASSED voice vote.

Lewin requested recorded vote.

FOR: Case, Hollander (*Proxy to Case*), Altman, Young

AGAINST: Rautenberg, Lewin

MEC continued discussion on the APA proposal.

Tannen briefed the MEC with numbers of captain projections and potentials for TWA first officers to become captain.

1209 Case/Lewin moved to enter into Committee of Whole.

VOTE: PASSED voice vote.

Rautenberg requested recorded vote.

FOR: Case, Hollander (*Proxy to Case*), Lewin, Altman, Young

AGAINST: Rautenberg

MEC continued discussion on APA's proposal.

Altman/Young moved to extend motion to POSTPONE until 1245.

VOTE: FAILED recorded vote.

Lewin requested recorded vote.

FOR: Young, Altman

AGAINST: Rautenberg, Lewin

ABSTAIN: Hollander (*Proxy to Case*), Case

Pastore voted against the motion to break to the tie vote.

Discussion continued.

Case for the record: "After much sole searching and deliberation, I speak against the motion for conditional acceptance of the seniority integration proposed by the APA representatives yesterday October 22, 2001.

Having been a principle in the effort to encourage the APA to return to the table, I find this offer an affront to those efforts. This offer cannot be considered fair and equitable by any reasonable standard. I represent a range of New York, First Officer constituents. This offer does not meet their needs or desires or the nearly 60% of pilots most directly affected by this offer. This offer places the whole of my constituents at risk of imminent furlough, and would devastate their careers. No reasonable standard would allow for 1241 TWA pilots, with years of service ranging from one year to twelve and a half years of service, to be placed below an American pilot who was hired on April 10, 2001. To rob those 1241 TWA pilots of their dedicated years of service and experience, and consider them newly hired at American Airlines as of April 10, 2001, is totally unacceptable.

Placing nearly 60% of the TWA pilots in immediate risk is deplorable. The only reasonable standard for furlough protection is a reasonable seniority number.

No reasonable standard of fair and equitable has been met with this offer.

After listening to American Airlines labor relations representative, Jeff Brundage, and quoting him: "American and the APA have a Tentative Agreement for an imposed seniority integration, which is essentially identical to the current offer on the floor," with two exceptions. I don't see the advantage of agreeing to this offer and thus denying the Association and TWA pilots due process.

I don't believe that American Airlines has exhausted their "reasonable best efforts" in this effort, and until that effort, and our grievance compelling that effort, has seen the light of day, we do not have the best deal available."

Young called the question that the letter to APA be issued as written.

VOTE: FAILED roll call vote.

Lewin requested roll call vote.

FOR: 803 AGAINST: 1128

FOR:	Hollander (<i>Proxy to Case</i>) Council#2-	3
	Case, Council #2-	3
	Rautenberg, Council #3-	710
	Young, Council #3-	7
	Lewin, Council #4-	80
AGAINST:	Hollander (<i>Proxy to Case</i>) Council#2-	208
	Case, Council #2-	200
	Rautenberg, Council #3-	2
	Young, Council #3-	631
	Lewin, Council #4-	4
	Altman, Council #4-	83

Holtzman updated the MEC regarding conversation with Brundage regarding mitigation. Brundage suggested that ALPA condition its acceptance on APA's mitigation efforts. If APA does this there would be seniority integration as we now it, if don't do mitigation, there would be no deal. For first quarter, the next furloughs would be between 0-250. Brundage suggested that there be in three-way conference call this afternoon to get this done.

Pastore briefed the MEC regarding his conversation with Don Carty. Pastore asked for full furlough protection. Carty said he could not guarantee furlough protection. Covered the furloughs for this year. There would be up to 200 furloughs the fourth quarter. However AMR was only anticipating 133. For the first quarter of next year, furloughs could be 0-250. Although AMR could not guarantee that there would be no furloughs, Pastore recommended asking for AMR to at least guarantee the numbers.

MEC Discussion

Lewin/Young moved to go into Committee of the Whole.
VOTE: PASSED voice vote.

MEC in the Committee of the Whole

1355 MEC Caucus

1400 Update from Trevor Blackaan of Senator Kit Bond's Office

Updated the MEC about the legislation. Senator Bond was committed, but had some concerns that the Bill could be filibustered.

Questions and Answers

1430 Update concluded.

1431 Discussion with Captain Duane Woerth (via phone)

Woerth and the MEC discussed the recent proposal and other options available to the MEC if they decide not to accept the deal.

1435 Discussion concluded.

1453 Case/Altman moved to recess until Merger Counsel arrived.

VOTE: PASSED recorded vote.

Lewin requested recorded vote.

FOR: Case, Young, Altman, Hollander proxy to Case

AGAINST: Rautenberg, Lewin

1454 Recess

1514 Reconvened

Pastore updated Hollander via phone with the recent comments from Woerth.

1617 Staff was excused from the room.

MEC discussion with Roland Wilder and the Merger Committee.

1635 Staff returned.

Lewin/Rautenberg moved to accept APA proposal with conditions as recommended by the Merger Committee (Counter proposal to APA).

Discussion

1624 Caucus

1630 MEC back in regular session.

1631 VOTE to send Counter proposal: **PASSED** roll call vote.

Lewin requested roll call vote.

FOR:	797	AGAINST:	412	ABSTAIN:	722
FOR:	Hollander (<i>Proxy to Case</i>) Council#2-				3
	Case, Council #2-				3
	Rautenberg, Council #3-				710
	Lewin, Council #4-				81
AGAINST:	Hollander (<i>Proxy to Case</i>) Council#2-				208
	Case, Council #2-				200
	Rautenberg, Council #3-				2
	Lewin, Council #4-				2
ABSTAIN:	Young, Council, Council #3				638
	Lewin, Council #4				1
	Altman, Council #4-				83

1635 Recess

1740 Reconvened

Pastore briefed the MEC regarding his phone conversation with Brundage. Brundage stated TWA, LLC pilots would not get Greenbook pay prior to January 1, and no guarantees on furloughs. Pastore said the Brundage did agree to provide in writing that furloughs would be no more than 200 in the 4th quarter of 2001 and no more than 250 pilots in the first quarter of 2002.

MEC Discussion with Captain Howard Attarian (via phone)

1758 Discussion concluded.

1759 Young called for the orders of the day.

Pastore asked for indulgence until Brundage responded to the Counter proposal. MEC agreed.

MEC Discussion with Captain Howard Attarian and Bob Christy.

Attarian stated that the counter proposal were not acceptable. MEC questioned how they were getting this information. Attarian stated that they just got off the phone with Brundage and he said the conditions were not acceptable. Pastore said that was not his understanding with his phone conversation with Brundage.

1804 Discussion concluded.

1805 MEC Caucus

1812 MEC Discussion with Jeff Brundage.

Brundage said that the counter proposal was not acceptable.

1818 Back in regular session

Holtzman outline terms of third proposal to send to APA.

1822 Rautenberg/Lewin moved to accept terms as described by David Holtzman.

VOTE: **FAILED** roll call vote.

Lewin requested roll call vote.

FOR: 807	AGAINST: 1123	ABSTAIN: 1
FOR:	Hollander (Proxy to Case), Council #2 -	3
	Case, Council #2 -	3
	Rautenberg, Council #3 -	710
	Young, Council #3 -	7
	Lewin, Council #4	81
	Altman, Council #4	3
AGAINST:	Hollander (Proxy to Case), Council #2 -	208
	Case, Council #2 -	200
	Rautenberg, Council #3 -	2
	Young, Council #3 -	631
	Lewin, Council #4	2
	Altman, Council #4	80
ABSTAIN:	Lewin, Council #4	1

Case stated that the MEC had sent a conditional acceptance to the APA proposal. The MEC is requesting a formal response.

Young asked if the MEC was requesting that Brundage state that he rejected the package? Holtzman said Brundage made it clear that it was not acceptable.

1829 Young/Altman moved to adjourned meeting.

VOTE: **PASSED** voice vote.

1830 Meeting adjourned.

Exhibit X



October 25, 2001

Fellow Council 3 Pilots:

Many of you have contacted me inquiring about the events of the past few days of meeting with the APA and American in Washington over the weekend. Since the issues are important to all Council 3 pilots, I will provide a brief overview of what occurred and information regarding the seniority integration provisions offered by APA and American.

As you know, ALPA has been seeking a fair and equitable seniority integration since the American buyout of TWA was announced in January. Those efforts reached a key milestone on Tuesday, October 23rd. After many hours of negotiation over four days, the MEC ended negotiations by rejecting a resolution to offer conditional acceptance of the terms on the table.

Those terms included a number of elements that, in general terms, were a seniority list, conditions, restrictions, a protective cell in STL, and protective provisions offered by American Airlines. The seniority list proposed by the APA was by any measure egregious. The list was constructed from essentially an 8 to 1 ratio starting at approximately 2600. That formula placed more than 1200 TWA pilots on the list after all AA pilots hired prior to April 10, 2001. The proposal restricted TWA pilots from flying large wide body aircraft until the last AA pilot hired prior to April 10, 2001 would be able to do so.

Conditions of the proposal created a protective cell for TWA pilots to take advantage of TWA retirements for a number of years. The duration of the narrow body cell was predicated on the Captain upgrade of the TWA pilot with seniority number 1729. That was estimated to happen in 2008. The cell would allow all TWA pilots senior to 1729 to upgrade at a rate determined by the number of TWA retirements and the STL staffing level. The duration of the small wide body cell was predicated on the small wide body captain upgrade of the TWA pilot with seniority number 1351. That was predicted to happen in 2014.

Essentially the cell would reserve STL narrow body flying for TWA pilots until approximately 2008 and small wide body flying until approximately 2014. TWA pilots in STL would

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Essentially the cell would reserve STL narrow body flying for TWA pilots until approximately 2008 and small wide body flying until approximately 2014. TWA pilots in STL would

advance in relative seniority by the TWA retirements until those dates. All TWA pilots senior to 1351 would have an opportunity to reach the small wide body, and all TWA pilots senior to 1729 would have an opportunity to reach captain based upon their relative TWA seniority. Other pilots would also advance in relative seniority until those dates.

The proposal also included minimum guaranteed system wide captain jobs for TWA pilots depending on the number of aircraft operated. Those guarantees topped out at 800 narrow body captains plus 260 small wide body captains.

American Airlines offered to provide a floor to the STL domicile. That floor was to be set at a level no less than 25% below the current staffing of STL as compared to ORD and DFW combined. The floor would have provided substance to backstop the protective cell from the arbitrary decisions of management relative to staffing in STL.

AA also offered furlough protection to the pilots placed on the list above the staple point. And AA and APA offered to set the recall position of furloughed TWA-LLC pilots at the staple point rather than at the bottom of the list at the time of recall.

In short form, the terms before the MEC were an egregious seniority list mitigated by a protective cell supported by an American staffing guarantee.

In the following paragraphs I'll address the three questions I contemplated in considering the terms before the MEC. (1) Is there anything left on the table to be negotiated? (2) Are the terms better than we would do in an AA-APA cram down? (3) Is there any recourse available to avoid a cram down?

1. Is there anything left on the table to be negotiated? The Merger Committee, Merger Chairman, and negotiating consultant, Jim Baehler, agreed that the APA had in front of the MEC, everything that was available. Amongst those engaged in the process there was virtually no dissent. The APA's position on the seniority list had been unwavering or moving backward. The congressional lobbying effort had created a level of uncertainty that should have caused the APA to move, if there was any room for movement left in their

position. The severity of the situation in the industry makes furloughs an expectation rather than a possibility. APA movement to a position that would expose more American pilots and fewer TWA pilots to furlough is highly improbable. The APA had stated publicly and in negotiations that they were done negotiating. American had stated that they had a tentative agreement with the APA on a seniority implementation. All of these factors led me to the conclusion that vis-à-vis the APA, there was nothing more on the table. However, it is possible that American could have had some small incremental participation available that would mitigate some of the effects of the egregious integration.

2. Are the terms better than we would do in a cram-down? American had unequivocally stated that in the absence of settlement, there would be (1) no guarantees as to the STL staffing level, (2) no furlough protection for any TWA pilot and (3) placement of TWA-LLC furlonghees upon recall would be subject to agreement between APA and AA. Both parties had indicated that such placement would be after all American pilots, not at the staple point. Further, although we have reason to believe that the seniority list imposed would be identical to that included in the terms, there is no guarantee or assurance that the protective provisions of the STL cell or system wide Captain guarantees would be included. American was also willing to set limits on furloughs during the 4th quarter and 1st quarter. It was absolutely clear to me that the terms under consideration were significantly superior to that which we could expect in a cram down.
3. Is there any recourse available to avoid a cram-down? I'll reserve detailed comment on this question for later. However, I will share at this time, that my decision on this issue was based in part upon consultation with and the advice of our merger counsel; consultation with our own labor counsel; a meeting with Paul Hallisay, ALPA's Director of Government Affairs; telephone contacts with ALPA President Duane Woerth and other ALPA officials; and last but not least, a teleconference with Trevor Blackann, a Director of Legislative Affairs in Senator Bond's office.

The MEC had been in continuous session in Washington since Sunday. I, along with two other members of the MEC declined

to attend Saturday's meeting when we learned that the first order of business was going to be making last minute changes in key personnel, including MEC Officers and the Merger Committee. Once personnel changes were off the table, the MEC was able to concentrate on the very important business of seniority integration and representation. After all day meetings on Sunday and Monday, the time for a decision arrived late Monday afternoon.

After a night of agonizing over the best course of action for the TWA pilots, on Tuesday morning I brought forward a motion reflecting the advice of counsel (Merger Counsel and our Contract Administrator) to accept the APA's terms with conditions that we had reason to believe would be acceptable to American. Captain Pablo Lewin, Council 4 Captain Representative joined me in support of that motion. F/O Altman, Captain Young and F/O Case voted against. F/O Case held Captain Hollander's proxy who was not present Monday night or Tuesday for reasons unknown to me. F/O Case voted Captain Hollander's proxy against. The motion failed.

Later in the afternoon, after an extremely traumatic process of assimilating additional information, the four members of the MEC that had rejected the prior motion, in caucus amongst themselves, decided that two of them, Captain Young and F/O Altman, were prepared to abstain from a vote on submitting acceptance of another conditional acceptance. The conditions that they required be placed in the acceptance were conditions that American had already stated in unequivocal terms were unacceptable.

I should also point out that the seniority integration terms were identical to the terms that the MEC had rejected earlier. One significant difference was a condition that American agree to not furlough anyone in the 4th quarter of 2001 and the 1st quarter of 2002. Those conditions had already been discussed with American and had been summarily rejected as absolutely impossible.

Although it was my belief that the conditions would lead to a breakdown in negotiations, in order to preserve some slight chance that we might be able to reap the benefits that American "was" willing to put on the table, Captain Lewin and I agreed to take responsibility for passing the motion while two voted against and two abstained. Although

the Master Chairman could have broken the resulting 2-2-2 tie (and he was prepared to do so), it was his desire that the MEC make the decision. So, with F/O Case (who had voted his vote and Hollander's proxy against the motion) encouraging him to do so, Captain Lewin invoked the roll call and since Captain Young and F/O Altman abstained all of their roll call votes, Captain Lewin and I had sufficient votes to actually offer something that at least had some potential to keep the negotiations ongoing.

I should point out that we were already well past the deadline that the parties had set for the negotiations, and that it had taken a significant degree of cajoling of Jeff Brundage of American to keep discussions alive.

After Jeff Brundage received our "conditions", which were the ones that he had already made clear were totally out of the question, we responded in two ways. One was a call between the Master Chairman and Brundage, in which he again rejected our conditions, and the second was a teleconference between those of us in the room, Brundage, Howard Attarian, Duane Woerth's Executive Assistant, and Bob Christy of ALPA Int'l. The only members of the MEC present in the room during that teleconference were Captain Lewin and myself, as the other four members of the MEC, which I will refer to as the DC caucus, had left to hold yet another caucus amongst themselves alone.

During that call, Attarian of ALPA Int'l made it absolutely clear that Brundage was at wit's end and that only minutes remained for acceptance of the offers that APA and American had made. Brundage personally made it clear that American was done negotiating, and that what American was willing to do to facilitate agreement between the APA and ALPA had already been made clear. In a final last effort to collect off the table those provisions that American was willing to provide to help alleviate the egregious nature of the seniority integration terms of the APA, Captain Lewin and I again brought forward a motion to communicate acceptance of the agreement conditioned on those additional provisions. In their own private meeting the DC caucus had apparently decided to reject anything further and that is what they did. Our motion failed again.

At that point the meeting was adjourned. The high fives and the celebration amongst the DC caucus began, and others who were not interested in celebrating including Captain

Lewin, myself, our two legal counselors, the MEC officers, a couple of members of the Merger Committee and a few others packed our stuff and departed the room.

That's the report on the final hours of the weekend. I'll provide more information on the entirety of the process as events and time allows over the next couple of weeks.

Steven Rautenberg
Council 3 Chairman

ALPA 008060

Exhibit Y

RECEIVED

MAR 21 2001



TWA COUNCIL 4 MEETING NOTICE

DATE: Friday, March 30, 2001

TIME: Noon

PLACE: Furama Hotel
8601 Lincoln Boulevard
Los Angeles, CA
(310) 670-8111

- AGENDA:**
1. Local Council Business
 2. Negotiating Committee Update
 3. TWA/American Airlines Merger Update
 4. Other Topics of Interest

GUESTS:

Bob Pastore, MEC Chairman
Scott Schwartz, MEC Vice Chairman

Beverages will be served.

Pablo Lewin, Chairman
TWA Council 4

ALPA 020998

Council Minutes



AIRLINE: TWA

Council: 004

CITY: Los Angeles, CA

DATE: March 30, 2001

A regular meeting of TWA Council 4 was held at the Furama Hotel, in Los Angeles, CA, on March 30, 2001.

I. Meeting called to order at 1200 by Pablo Lewin, chairman, seconded by J. Buss.

II. Record of attendance:

LAX F/O Arthur W. De Wit	LAX Cap Court Mumford	LAX Cap Larry Balliet
LAX F/O James Buss	LAX F/O Keith Bounds	LAX Cap Bill Skinner
LAX Cap Tom Solomon	STL Cap Emmett Conrecode	LAX Cap Pat Brady
LAX Cap Jerry Reynolds	LAX Cap Marv Smith (ret.)	LAX Cap Gene Mihalka
LAX Cap Scott Willson	LAX Cap Ed Duenes	JFK Cap Gary Benson
LAX F/O Felton Walker	LAX Cap Brent Miller	LAX Cap Jim Sherk
LAX Cap Dick Hoyt	LAX Cap Larry Koch	SFO F/O Owen Smith
LAX F/O Alan Altman	LAX Captain Bob Pastore	SAN Cap Pablo Lewin
SAN Cap Jim Vanek	LAX Cap Tom Wiese (ret)	

III. Motion to approve minutes from previous Council 4 LEC meeting, made by D. Hoyt, seconded by R. Pastore. Motion approved.

IV. OFFICERS' REPORTS

A. Captain Pablo Lewin provided background and introduced First Officer Rep Alan Altman. He then took many questions from and provided answers to the members present.

B. Captain Glenn Stieneke—not present due to recent death of mother.

C. Captain Scott Schwartz—not present due to personal business.

D. Representative Alan Altman, who acts as vice chairman of Council 4 as well as vice chairman of Negotiating Committee, gave extensive background and update on the current status of negotiations with the Company regarding the CBA. He also spoke on the significance of the upcoming Section 1113 motion to be heard a week from today in the Bankruptcy Court. He then took many questions from and provided answers to the members present.

E. MEC Chairman and TWA ALPA Board of Directors Representative Bob Pastore provided his perspective and insight into the current negotiations under way with both TWA and AMR and APA. He then took many questions from and provided answers to the members present.

Pursuant to the aforementioned presentations, a motion was offered by K. Bounds directing members of the LEC to ensure our continued representation by ALPA after the closing date of the TWA/AMR deal. Furthermore, the LEC was directed to secure the TWA/ALPA CBA throughout the life of TWA Airlines, LLC. Seconded by J. Buss. Discussion held. Motion approved.

WHEREAS the TWA pilots currently employed by TWA, Inc. and represented by the Air Line Pilots Association may be subject to employment by an AMR subsidiary, TWA LLC concurrent with the closing of the TWA/AMR Asset Sale,

THEREFORE BE IT RESOLVED that the Council 4 pilots instruct the Council 4 LEC officers to vigorously pursue the representation of the TWA LLC pilots by the Air Line Pilots Association.

BE IT FURTHER RESOLVED that the Council 4 pilots instruct the Council 4 LEC officers to vigorously pursue the protections that at all times the current and future TWA LLC pilots and the retired pilots of TWA, Inc. shall be covered by a collective bargaining agreement.

Bounds/Buss. Passed unanimously.

Motion by Bob Pastore regarding ALPA's representation of retired pilots' interests. Seconded by P. Brady. Discussion occurred. Motion approved.

WHEREAS most ALPA pilots will retire from their respective airline, and

WHEREAS most Collective Bargaining Agreements contain language that affect pilot retiree benefits, and

WHEREAS the president of the Association has recently advised retired TWA pilots that ALPA does not represent them,

THEREFORE BE IT RESOLVED that the Council 4 pilots direct the Council 4 officers to introduce a resolution to the MEC that would require the ALPA Executive Board to address pilot retiree issues.

Pastore/Brady. Passed unanimously.

P. Lewin, Alan Altman, and Bob Pastore discussed the issue of seniority integration. However, they were unable to discuss the specific details of the plan so as not to jeopardize ALPA's negotiating position. Extensive discussions were held. The officers took many questions from and provided answers to the members present.

VII. OLD BUSINESS

P. Lewin exhorted all members present to make sure their standing bids were in good order due to the upcoming displacement messages; then he informed the members that one of the first actions they should take when having an incident or accident is to make sure that an ALPA rep and CASC Chairman Captain Vince Cocca are informed immediately.

VIII. NEW BUSINESS

P. Brady offered a motion to adopt a policy calling for two Council 4 meetings to cover both SF and LA. The motion was seconded by S. Willson. Discussion held. P. Lewin spoke in opposition to the motion. The motion was withdrawn by P. Brady and S. Willson. P. Lewin agreed to forward, in writing, to P. Brady, the reasons as to why bi-domicile meetings would cause an undue burden on the LEC.

IX. ADJOURNMENT

At 1543, B. Pastore made a motion to adjourn the meeting. Seconded by P. Brady. Motion approved.

Respectfully submitted,

/s/

Pablo Lewin, Chairman

TWA Council 4

ALPA 021001

TWA COUNCIL 4
MEETING NOTICE

DATE: Wednesday, July 18, 2001
TIME: Noon-4:00 p.m.
PLACE: Furama Hotel
8601 Lincoln Boulevard
Los Angeles, CA
(310) 670-8111

AGENDA: 1. TWA and American
Seniority Integration
Issues
2. Negotiating Committee
Report
3. Local Council 4 Issues
4. Consideration of Recall of
Council LEC 4 Chairman
Captain Pablo Lewin

Refreshments and snacks will be served.

Pablo Lewin, Chairman
TWA Council 4

ALPA 021002

Exhibit Z

D-411

SECTION 115 – JUMPSEAT POLICY

5/31/01

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SECTION 115 - JUMPSEAT POLICY

PART 1 - JUMPSEAT POLICY

SOURCE - Executive Board October 1997; AMENDED - Board 2000

The following policy provides guidelines that may be used by Master Executive Councils in establishing jumpseat policies and procedures with their respective airlines.

ALPA encourages participation by other pilot unions and officials of non-represented airlines in the industry-wide Jumpseat Task Force.

ALPA encourages all pilots to extend the use of their jumpseats to eligible cockpit crewmembers as a professional courtesy and as a resource to enhance the safety of flight. The Captain is, and shall always be, the final authority as to admission to the flight deck.

Denial of jumpseat privileges as a means of punishing, coercing or retaliating against other pilot groups or individuals is not supported by ALPA. The Jumpseat and/or Professional Standards Representative appointed by the respective Master Executive Council or governing body should resolve disputes that arise between pilots, airlines or other unions.

Master Executive Councils should appoint a Jumpseat Coordinator/Committee Chairperson and authorize him/her to work with their Company in establishing and administering jumpseat policy and procedures.

A. MEC JUMPSEAT COORDINATOR/COMMITTEE CHAIRPERSON

1. Guidelines for selection of Jumpseat Coordinator/Committee Chairperson
 - a. Experience - must be knowledgeable of the applicable Federal Aviation Regulations, associated legal interpretations and specific company policies that affect jumpseat usage at their respective airline.
 - b. Appointment/Term of Office - per MEC policy.
2. Funding for MEC Jumpseat Coordinators/Committee Chairpersons
 - a. Necessary funding for the MEC Jumpseat Coordinator/Committee Chairperson should be arranged by the respective MEC. Funding considerations should include flight pay loss, as well as other related expenses, to adequately represent pilot issues.

B. DUTIES AND RESPONSIBILITIES OF JUMPSEAT COORDINATORS/COMMITTEE CHAIRPERSONS

1. Establish appropriate communication with the MEC to insure proper administration and compliance with the respective airline's jumpseat program.
 - a. The Jumpseat Coordinator/Committee Chairperson should report directly to the MEC Chairperson or designated appointee. The Coordinator or Chairperson should be authorized to represent the MEC in dealings with Company Officers on jumpseat matters. Issues of a critical nature should immediately be addressed to the MEC Chairperson.

SECTION 115 - JUMPSEAT POLICY

5/31/01

2. Maintain an accurate file of company and industry-wide jumpseat policy and procedures.
 - a. When changes occur, the MEC Jumpseat Coordinator or Committee Chairperson should communicate them to the ALPA National Jumpseat Committee Chairperson for appropriate dissemination. ALPA resources will be used to keep all members of the Jumpseat Task Force informed on specific airline policies and procedures.
 - b. Communicate company and industry-wide changes of jumpseat procedures and protocol to the pilot group and other affected company employees. Appropriate union and/or company media sources should be incorporated to accomplish this.
3. Address and resolve issues that may arise over jumpseat authority and usage in a timely manner. Reciprocal airline and other off-line matters should be discussed with the associated Jumpseat Coordinator. Discussions beyond ALPA represented carriers should include the ALPA National Jumpseat Chairperson.
4. Submit a Jumpseat Coordinator/Committee report at all regularly scheduled meetings of the MEC, or as otherwise directed.

C. ADMISSION TO FLIGHT DECK

1. Captains should be familiar with applicable Federal Air Regulations and their own Company policies concerning jumpseat use.
2. ALPA supports the Captain's authority to manage the flight deck environment and resources in a manner that enhances safety. Accordingly, ALPA supports the Captain's authority to exclude any person other than required crew from the flight deck if, in his opinion, that person's presence will compromise safety.
3. If a jumpseat rider is to remain on the flight deck, the Captain will ensure that he/she is properly briefed on safety, communication and evacuation procedures. This may be done verbally or by means of a printed aircraft specific briefing card.
4. ALPA and most airlines consider a pilot jumpseat rider as an additional crewmember. Pilot jumpseat riders must be prepared to exercise flight related tasks that the Captain may assign.

D. CABIN SEATING

1. In accordance with company policy, if a cabin seat(s) is available, the Captain may offer it to a jumpseat rider(s) to accommodate additional jumpseat requests. Appropriate procedures for such accommodations should be adopted and developed as Company policy.
2. As representatives of their airline and profession, jumpseat riders must conduct themselves in a manner that is above reproach at all times.
3. Although seated in the cabin, jumpseat riders may be asked to assist the cockpit or cabin crew in certain situations.

E. SECURITY/IDENTIFICATION

1. Without exception, security is paramount in all aspects of aviation safety. The Captain is responsible for ensuring that all jumpseat riders admitted to the flight deck have in their possession the proper documentation. For pilots, this shall include airmen's certification and valid company ID. Jumpseat riders should have this identification readily available for inspection.
2. Host Captains should recognize that a union membership card is another means of identity verification, although not all pilots of represented airlines are union members.
3. Under the Captain's authority, entry to the flight deck will not be permitted for individuals with whom the Captain or his flight deck crew is not entirely comfortable.

**F. JUMPSEAT FRAUD AND ABUSE**

1. A fraudulent jumpseat rider is an individual attempting to gain access to a flight deck by knowingly being deceptive. Counterfeit IDs, failure of medical certificate standards or dismissal by the presented employer constitute fraudulent representation.
2. An abuse of the jumpseat privilege includes, but is not limited to, individuals revenue positioning at company request for reasons other than commuting to or from work or on personal business.

G. BOARDING PRIORITY

1. It is understood that certain individuals, such as government or company officials in the performance of their duties, must be given free and unlimited access to the cockpit by FAR. Seniority, first-come, first-served or a reservation system may be used for company and off-line pilots.
2. Extending preferential boarding to specific carriers shall be reviewed and amended when determined appropriate by the Coordinator/Chairperson, the MEC and the Company.
3. Within boarding priority, most airlines accommodate off-line jumpseat riders on a first-come, first-served basis. Due consideration should be given to union affiliation. Any problems that arise should be quickly referred to the Captain for resolution.
4. Company boarding priority for other individuals shall be mutually developed by the Jumpseat Coordinator/Committee Chairperson, the airline management and the MEC.

H. OTHER JUMPSEAT REQUESTS

1. The FAA has an established procedure whereby air traffic controllers are allowed access to the cockpit for familiarization flights. ALPA supports these familiarization flights and encourages pilots to welcome controllers into their cockpits for this purpose. ATC personnel must have in their possession FAA Form 3120-28 Parts A&B, FAA Form 3120-31 and their FAA identification card/badge.
2. Foreign air carrier pilots, FAA licensed dispatchers and other individuals may be accommodated with authorization by the FAA and company flight management authorities.

I. NATIONAL JUMPSEAT REGISTRY

SOURCE - Board 2000; AMENDED - Executive Board May 2001

The ALPA Jumpseat Committee shall produce and maintain a National Jumpseat Registry. The airlines listed will abide by ALPA Jumpseat Policy and shall have appointed Jumpseat Coordinators to work with the ALPA sponsored Industry Jumpseat Task Force. The Registry will be disseminated within ALPA to Master Executive Councils and their appointed Jumpseat Coordinators to use as they see fit.

SECTION 115 - JUMPSEAT POLICY

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AA

JOINT PROPOSED FINAL JURY INSTRUCTIONS

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The parties hereby jointly submit the following proposed Jury Instructions for use at the conclusion of evidence in this case. Despite a meet and confer and the exercise of good faith efforts, counsel were not able to agree to charges with respect to the description of this case and the substantive charges on the duty of fair representation. Accordingly, the parties have incorporated alternative requests for charges as indicated herein. Each party respectfully reserves their right to propose additional charges or to modify the submitted charges to conform with the evidence and the Court's rulings on legal issues.

LADIES AND GENTLEMEN OF THE JURY:

Proposed Charge No. 1: Introduction to the Final Charge - Province of the Court and of the Jury¹

Now that you have heard all of the evidence to be received in this trial and the arguments of counsel it becomes my duty and privilege to give you the final instructions of the Court as to the law that will guide you in your decisions.

The Plaintiffs in this matter are several individuals, Howard Hollander, Sally Young, Patrick Brady, Ted Case and Michael Finucan. They are former pilots for TWA and TWA, LLC. In this action, these individuals are pursuing this litigation not only on their own behalf, but they also represent a class of plaintiffs consisting of some of the approximately 2,300 individuals who were pilots of TWA as of April of 2002.

As you have heard, the defendant, the Air Line Pilots Association, International, which has been referred to as ALPA, is a union and represented the pilots of TWA up until April of 2002.

During the course of these instructions I will refer to the Plaintiffs as Plaintiffs or the Class and I will refer to the Defendant as ALPA.

All of the instructions of law given to you by the Court -- those given to you at the beginning of the trial, those given to you during the trial, and these final instructions -- must guide and govern your deliberations. It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them from the evidence received during the trial.

¹ Proposed Jury Charges 1 to 10, 12, 25 and 26 are from the Court's Standard Jury Charges filed on CM/ECF on March 1, 2011 [Doc. #360-2]. Citations are provided with respect to all other charges.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You should construe each of the instructions in light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. The order in which the instructions are given has no significance and is no indication of their relative importance.

Counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you. If any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you are to be governed by the instructions given to you by the Court.

You must not be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any view of the law other than that given in these instructions. It also would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You were chosen as jurors for this trial in order to evaluate the evidence received and to decide the factual questions presented by the respective positions of Plaintiffs and ALPA. In deciding the issues presented to you for decision in this trial, you must not be swayed by bias, prejudice, or sympathy for or against any of the parties, nor influenced by public opinion.

Justice through trial by jury depends upon the willingness of each individual juror to evaluate the same evidence presented to all the jurors here in the courtroom and to arrive at a verdict by applying the same rules of law that I am giving you now in these instructions.

At times during the trial you saw lawyers make objections to questions asked by other lawyers, and to answers by witnesses. This simply meant that the lawyers were asking me to

make a decision on a rule of law. Do not draw any conclusion from such objections or from my rulings on them. These related only to the legal questions that I had to determine and should not influence your thinking. When I sustained an objection to a question, the witness was not allowed to answer it. Do not attempt to guess what answer might have been given had I allowed the question to be answered. Similarly, when I told you not to consider a particular statement, you were told to put that statement out of your mind, and you may not refer to that statement in your deliberations.

During the course of the trial we have from time to time held conferences with the attorneys at sidebar out of the hearing, hopefully, of the jury. These conferences were held to resolve legal issues which arose during the trial. Please do not speculate about what was said or decided at these sidebar conferences. Do not consider them in any way in reaching your verdict.

At times during trial, I asked questions of witnesses. These questions should not be taken as an indication that I have any opinion about the facts in the case. Indeed, if I have said or done anything during the trial, or in instructing you now, that leads you to believe that I am inclined to favor the case of the Plaintiffs or the Defendant, you must remove that impression from your minds and not permit yourselves to be influenced by it because none was intended to be created.

Proposed Charge No. 2: Judging the Evidence

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received, and to give such evidence a reasonable and fair construction in the light of your common knowledge of human nature.

Keep in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court.

Proposed Charge No. 3: Burden of Proof

The party with the burden of proof on any given issue has the burden of proving every disputed element of his or her claim to you by a preponderance of the evidence. If you conclude that the party bearing the burden of proof has failed to establish any required element of that claim by a preponderance of the evidence, you must decide against that party on the issue you are considering.

What does “preponderance of evidence” mean? To establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not. A preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the testimonial and documentary evidence, not to the number of exhibits or witnesses.

If you find that the credible evidence on a given issue is evenly divided between the parties, such that it is equally probable that one side is right as it is that the other side is right, then you must decide that issue against the party having the burden of proof. That is because the party bearing this burden must prove more than simple equality of evidence; Plaintiffs must prove the issue by a preponderance of the evidence. On the other hand, the party with the burden of proof need prove no more than a preponderance. So long as you find that the scale tips, however slightly, in favor of the party with the burden of proof -- that what the party claims is more likely true than not true -- then that element will have been proved by a preponderance of the evidence.

Proposed Charge No. 4: Evidence Received in the Case

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been agreed to or stipulated.

The parties have agreed that a number of facts that have been presented to you as stipulated facts are true. Those stipulations have been read to you during this trial. You must therefore treat the stipulated facts as having been proved for the purposes of this case.²

You have also heard testimony in the form of depositions and interrogatories, which have been received into evidence. A deposition is simply a procedure in which the attorneys for one side question a witness or an adversary party under oath before a court stenographer prior to trial. An interrogatory is a written question to which a party or witness provides a written answer. A video deposition is a procedure where attorneys question a witness under oath before a court stenographer prior to trial while the whole proceeding is simultaneously taped by a specially trained video operator. Deposition and interrogatory testimony is entitled to the same weight as live testimony and should be evaluated by you in the same manner as you would evaluate any other testimony.

During the trial several items were received into evidence as exhibits. These exhibits will be sent into the jury room with you when you begin to deliberate. Examine the exhibits if you think doing so will help your deliberations. Any proposed testimony or proposed exhibit to which an objection was sustained by the Court and any testimony or exhibit ordered stricken by the Court must be entirely disregarded.

² Third Circuit Model Jury Charges, 2.4.

Likewise, anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

Proposed Charge No. 5: Questions are Not Evidence

Questions, objections, statements, and arguments of counsel are not evidence in the case. If a lawyer asks a question on cross examination which incorporates a statement which assumed certain facts to be true, the question is not evidence of those facts if the witness denies the truth of the statement in his or her answer. You may consider the facts incorporated into a question only if the answer of the witness recognizes their truth. In short, questions are not evidence, answers are.

Proposed Charge No. 6: Inferences From the Evidence

You are to base your verdict only on the evidence received in the case. In your consideration of the evidence received, however, you are not limited to the bald statements of the witnesses or to the bald assertions in the exhibits. In other words, you are not limited solely to what you see and hear as the witnesses testify or as the exhibits are admitted. If you find a fact has been proven, you are permitted to draw from that fact such reasonable inferences as you feel are justified in the light of your experience and common sense. Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the facts proven in the case.

Proposed Charge No. 7: Direct and Circumstantial Evidence

There are two types of evidence which are generally presented during a trial -- direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence or non-existence of a fact. The law generally makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial. You should weigh all the evidence in the case. After weighing all the evidence, you must decide if Plaintiffs have satisfied their burden of proving each element of the case by a preponderance of the evidence.

Proposed Charge No. 8: Jury's Recollection Controls

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel. You are the sole judges of the evidence received in this case.

Proposed Charge No. 9: Juror Notes

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

Proposed Charge No. 10: Credibility

There are times when you are asked to draw different inferences from the same facts. It is for you, and you alone, to decide what reasonable inferences you choose to draw from the evidence in this case.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate. You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony.

You are called upon to resolve various issues of fact concerning the respective allegations of the parties. How do you determine where the truth lies? Your determination of the credibility or believability of a witness depends largely upon the impression the witness made upon you as to whether or not he or she was giving an accurate and truthful version of what occurred. In weighing the testimony of a witness you should consider his or her interest, if any, in the outcome of the case, his or her manner of testifying, and the extent to which he or she has been supported or contradicted by other credible evidence. You may accept or reject the testimony of any witness in whole or in part.

You must use your common sense, your good judgment, and your experience. In other words, what you must try to do is to size a person up, just as you would in any important matter where you are undertaking to determine whether or not a person is truthful, candid, and straightforward.

In passing upon the credibility of a witness, you may also take into account inconsistencies or contradictions as to material matters in his or her own testimony, the length of time which has passed since the events testified about, and any conflict between his or her

testimony and the testimony of another witness. A witness may be inaccurate, contradictory, or even confused in some minor respects, and yet be entirely credible in the essentials of his or her testimony.

The ultimate question for you to decide in passing upon credibility is -- did the witness tell the truth? It is for you to say whether his or her testimony at this trial is truthful in whole or in part in the light of the demeanor, the explanations, and all the evidence in the case.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars; and you may reject all the testimony of that witness, or you may give it such credibility as you think it deserves.

Proposed Charge No. 11: Number of Witnesses

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testify. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves.³

³ Third Circuit Model Jury Charges, 3.2

Proposed Charge No. 12: Prior Inconsistent Statements

During the course of the trial, the parties have sometimes challenged the testimony of certain witnesses by pointing to prior statements the witnesses made or allegedly made. In considering this evidence, you must separate these prior statements into statements that were not made under oath and statements that were made under oath.

You may consider prior statements that were not made under oath solely for the purpose of impeachment; that is, you may consider them only to help you decide if you believe the witness's testimony. For example, if the witness said something previously that conflicts with what he or she said here in court, there may be reason for you to doubt that witnesses' testimony. That is for you to decide. You are not permitted, however, to use these earlier statements as affirmative, substantive evidence in this case.

If, however, the witness is a party, that is, the witness is one of the Named Plaintiffs or is an officer, employee, or agent of ALPA, then even their unsworn prior statements may be treated by you as substantive evidence in this case.⁴

Prior statements that were made under oath -- for example at a deposition, or in an affidavit, an answer to a written interrogatory or a sworn certification -- should be treated just as if they were made here in court. You may consider them for the purpose of impeachment, as above, but you may also consider them as affirmative, substantive evidence. You may rely on these statements as much, or as little, as you think proper.

It is exclusively your duty to determine whether the prior statement was inconsistent, and, if so, the significance of the inconsistency and how much weight it should be given.

⁴ ALPA objects to this paragraph only to the extent that the terms "employee" and "agent" must be more fully defined.

Proposed Charge No. 13: Nature of the Claim (alternative charges proposed)

[Plaintiffs' Proposed Charge]

In this case, the TWA Pilots claim that the ALPA, their former union, breached its duty of fair representation. ALPA denies those claims.

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence during the trial, I will now give you a brief summary of the TWA Pilots' claims and the elements that the TWA Pilots must prove to make their case.

ALPA, as the union and exclusive bargaining representative for the TWA Pilots, was required under the law to fairly represent the TWA Pilots. This duty is known as the "duty of fair representation" and is similar to a fiduciary duty and a duty of undivided loyalty. The TWA Pilots claim that ALPA breached its duty of fair representation by failing to protect the TWA Pilots' seniority as part of TWA's merger with American Airlines, and the subsequent merger of the two pilot groups. Instead of fairly representing the TWA Pilots to ensure a fair integration between the TWA and American Pilot seniority list, Plaintiffs allege that ALPA sacrificed the interests of the approximately 2,300 TWA Pilots in an attempt to curry favor with the over 11,000 American Pilots who ALPA was attempting to acquire into its union. Plaintiffs allege that ALPA proceeded with its efforts to court the American pilots while falsely assuring the TWA Pilots that these efforts had ceased. Plaintiffs further claim that this created a conflict of interest that infected the entire seniority negotiation and ultimately resulted in a loss of seniority for the TWA pilots.

ALPA denies these allegations.

In order to prove their case, the TWA Pilots will have to establish by a preponderance of the evidence that ALPA's representation of the TWA Pilots was either arbitrary or motivated by bad faith. I will describe these terms to you in greater detail at the close of the evidence. If you decide that the TWA Pilots have proven their case, then you will have found that ALPA is liable to the TWA Pilots and your verdict must be for the Plaintiffs.

In that situation, it will be necessary to determine the amount of damages caused by that breach, but that determination will be made in a later phase of the case by another jury or the Court. In this trial, you are not going to be asked to determine the amount of money damages owed to the TWA Pilots. Rather, you are only being asked to determine whether ALPA breached its duty to the TWA Pilots.

[Defendant's Proposed Charge]

In early 2001, TWA, Inc. ("TWA") and American Airlines negotiated an asset purchase transaction. At the time, TWA was in dire financial straits and American Airlines appeared to be its only and last financial hope before it succumbed to liquidation and went completely out of business.⁵ To save the jobs of the TWA pilots, in late winter and early spring of 2001, the TWA Master Executive Council, a representative of ALPA, negotiated an agreement which provided, among other things, that the TWA pilots would become employees of American and that American would use its reasonable best efforts to assure that its pilot union, the APA, would agree to a fair and equitable process for the seniority integration of the TWA pilots. The Bankruptcy Court approved this agreement and permitted American to purchase TWA's assets.

Representatives of the TWA MEC and of the APA, over several months, did not reach agreement on a seniority integration. On November 8, 2001, American and the APA adopted a document which ultimately controlled the unified seniority system, known as the Supplement CC. An arbitrator later determined that American fulfilled its obligation to the TWA pilots to use its reasonable best efforts to secure a fair and equitable process for seniority integration and that determination is not at issue in this case. Accordingly, you must take it as a given that American did use its reasonable best efforts with the APA to secure a fair and equitable seniority integration for the pilots of both airlines.

Plaintiffs claim that ALPA, a labor union representing pilots for TWA, violated its duty to fairly represent the TWA pilots in connection with the integration of the TWA pilots into American. I will provide you with some more detail about these claims shortly.

ALPA denies these claims and contends that it represented the TWA pilots appropriately under the difficult circumstances presented by TWA's financial situation and bankruptcy. ALPA

further contends that its members and, in particular, the members of the Master Executive Council, were fully apprised of all the relevant facts regarding their decisions.

As I mentioned earlier, this case is being pursued by the named Plaintiffs on behalf of a class of certain of the former TWA pilots. While the outcome of this case will affect these members of this class, this issue should not influence your decision making on whether the Plaintiffs here have proved all the elements of their case. The question of whether it is appropriate for these claims to be decided with respect to the whole class is a legal question which I have already resolved. You should not view the fact that this is a class action as making the Plaintiffs' claims any more true or likely. You must evaluate the proofs as they are presented to you without consideration of the class action question.

⁵ *Bensel v. Allied Pilots Ass'n*, 675 F. Supp. 2d 493, 495 (D.N.J. 2009).

Proposed Charges No. 14: Charges on DFR Claims (alternative charges proposed)

Plaintiffs' Proposed DFR Charges

[Plaintiffs' Proposed Charge No. 14(a)- The Duty of Fair Representation – Generally]

When a union, as in this case, is the exclusive bargaining representative for a group of employees, the law requires that union to represent the interests of the employees in a proper manner. This requirement is known as the duty of fair representation. ALPA owed a duty of fair representation to the TWA Pilots.

The duty of fair representation is similar to the duty owed by other fiduciaries to their beneficiaries. Just as these fiduciaries owe their beneficiaries a duty of care as well as a duty of loyalty, a union owes employees a duty to represent them adequately as well as honestly and in good faith.

The duty of fair representation is similar to the duty of undivided loyalty. Just as a public official owes a duty of honest, faithful and disinterested service to the public, a union owes employees a duty of undivided loyalty and may not to engage in undisclosed, biased decision making for its own gain.

The primary concern that the duty of fair representation was designed to address is that individual employees not be deprived of all effective means of protecting their own interests.

In this case, you must decide whether ALPA breached its duty of fair representation.

A union breaches its duty of fair representation when its conduct toward a member or members of the bargaining unit it represents is arbitrary, in bad faith, or discriminatory.

Bensel v. Allied Pilots Ass'n, 675 F.Supp.2d 493 (2009)(Summary Judgment Opinion)

Steele v. Louisville & Nashville Railroad, 323 U.S. 192, 202--03 (1944) (Railway Labor Act "impose[s] on the bargaining representative . . . the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts").

Breining v. Sheet Metal Workers Int'l Ass'n Local Union 6, 493 U.S. 67, 83 (1989) (A union's duty of fair representation is often described as the corollary of the worker's surrender of his right to bargain individually)

Delcostello v. International Brotherhood of Teamsters, 462 U.S. 151, 164 (1983) ("[I]f individual employees are not to be deprived of all effective means of protecting their own interests, it must be the duty of the [union]" to fairly represent them in good faith.)

Masy v. New Jersey Transit Rail Operators, Inc., 790 F.2d 322, 328 (3d Cir. 1986) ("The rule is a counterbalance to the union's position as exclusive bargaining representative.")

Airline Pilots Association v. O'Neill, 499 U.S. 65, 74 (1991) (The union's duty of fair representation has thus been described as similar to a fiduciary duty)

Vasile v. International Brotherhood of Teamsters, 1981 U.S. Dist. LEXIS 17583, *14 (D.N.J. 1981) (unions afforded deference)

Bellesfield v. RCA Communications, Inc., 675 F. Supp. 952, 955 (D.N.J. 1987)

Crider v. Spectrulite Consortium, Inc., 130 F.3d 1238, 1243 (C.A.7 (1997) ("whether the Union's conduct was discriminatory and whether it was in bad faith must be analyzed separately, the analyses are related.").

Vaca v. Sipes, 386 U.S. 171, 177 (1967) ("the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.").

Lewis v. Tuscan Dairy Farms, 25 F.3d 1138, 1142 (2d Cir. 1994) (deprived plaintiffs of all effective means to protect their interests); *Aquinaga*, 933 F.2d at 1471.

Air Line Pilots Ass'n, Intern. v. O'Neill, 499 U.S. 65, 75 (U.S. 1991) ("The fair representation duty also parallels the responsibilities of corporate officers and directors toward shareholders. Just as these fiduciaries owe their beneficiaries a duty of care as well as a duty of loyalty, a union owes employees a duty to represent them adequately as well as honestly and in good faith.") (citing Restatement (Second) of Trusts § 174 (1959); *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Hanson Trust PLC v. ML SCM Acquisition Inc.*, 781 F.2d 264, 274 (2d Cir. 1986).

United States v. Antico, 275 F.3d 245, 262-63 (3d Cir. 2001) ("undisclosed, biased decision making for personal gain, whether or not tangible loss to the public is shown, constitutes a deprivation of honest services").

**[Plaintiffs' Proposed Charge No. 14(b) - Breach of the Duty of Fair Representation –
Arbitrary Conduct]**

A union violates its duty of fair representation if it acts in an arbitrary manner in its representation of any employee. Conduct is arbitrary if, looking at all the evidence presented, it is so far outside a wide range of reasonableness that it is irrational. A union acts arbitrarily when it makes decisions based on considerations that are not legitimate union objectives.

Examples of arbitrary conduct include things like:

- (a) Deciding not to pursue the rights or complaints of employees it represents in order to curry favor with employees represented by a competing union;
- (b) Violating union policy; or
- (c) Acting in a perfunctory or superficial manner.

If you find, looking at all of the evidence presented, that ALPA acted arbitrarily, you must find that it breached its duty of fair representation.

International Brotherhood of Electrical Workers v. Foust, 442 U.S. 42, 47 (1979) (perfunctory conduct may constitute arbitrary, discriminatory or bad faith conduct)

Bennett v Local Union No. 66, Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union, Local Union 66, 958 F.2d 1429, 1438 (C.A.7 1992) (“When a union deliberately turns its back on an employee and sacrifices that employee’s contractual rights, it has acted improperly. Intentionally acting to deprive an employee of her rights under the collective bargaining agreement—whether ultimately out of personal antipathy, political differences or merely to avoid work—constitutes acting for an improper reason, and is thus a breach of the union’s duty”).

Conkle v. Jeong, 73 F.3d 909, 915-916 (C.A.9 1995) (holding that a union’s decision is arbitrary if it lacks a rational basis).

Johnson v. United States Postal Service, 756 F.2d 1461, 1465 (9th Cir. 1985) (holding that reckless disregard may constitute arbitrary conduct).

Tenorio v. NLRB, 680 F.2d 598, 601 (C.A.7 1982) (defining arbitrary as the “egregious disregard for the right of union members”).

Trinque v. Mount Wachusett Community College Faculty Assn., 437 N.E.2d 564, 568-569 (Mass. App. 1982) (“Although ordinary negligence may not amount to a denial of fair representation,

lack of a rational basis for a union decision and egregious unfairness or reckless omissions or disregard for an individual employee's rights may have that effect.”).

Addington v. US Airline Pilots Association, 2009 U.S. Dist. LEXIS 61724, *remanded*, 606 F.3d 1174 (9th Cir. 2010) (D. Ariz. 2009)(“Even if the union's conduct could be rationally related to a legitimate union objective, the union can be liable for violating its duty of fair representation if its actions are shown to be solely motivated by objectives that are not legitimate union objectives.”).

[Plaintiffs' Proposed Charge No. 14(c) - Breach of Duty of Fair Representation - Bad Faith]

A union violates its duty of fair representation if it exhibits bad faith towards any employee it represents. A union exhibits bad faith when it acts, or fails to act, out of hostility or ill will towards, or out of desire to obtain an undeserved benefit at the expense of, employees it represents.

Examples of bad faith include things like:

- (a) Depriving employees of their right to the union's undivided loyalty,
- (b) Failing to disclose a conflict of interest,
- (c) Making decisions motivated by divided loyalty or undisclosed self—
interest or bias,
- (d) Making intentionally misleading statements to employees,
- (e) Failing to provide adequate information necessary to make informed
decisions, or
- (f) Making intimidating statements toward those who oppose the union

You must decide not whether ALPA's actions or decisions themselves were right or wrong, but rather whether, looking at all of the evidence presented, ALPA acted in bad faith in representing the TWA pilots.

If you find, based upon the evidence presented, that ALPA acted in bad faith, you must find that it breached its duty of fair representation.

Bensel v. Allied Pilots Association, 387 F.3d 298, 311 (3d Cir. 2004).

Bensel v. Allied Pilots Association, 675 F.Supp.2d 493 (2009)(Summary Judgment Opinion)

Black's Law Dictionary 139 (6th ed. 1990) (bad faith defined as "the conscious doing of a wrong because of a dishonest purpose or moral obliquity . . . [I]t contemplates a state of mind affirmatively operating with furtive design or ill will."

Defendant's Proposed DFR Charges

[Defendant's Proposed Charge No. 14(a) - Elements of Plaintiff's Claim]

In order to prevail on their claim that ALPA breached its duty to fairly represent its union members in regard to their integration into American Airlines, Plaintiffs must prove by a preponderance of the evidence that:

- 1) By way of actions or omissions, ALPA was motivated by bad faith toward the TWA pilots; and
- 2) Plaintiffs suffered actual injury as a direct result of ALPA's bad faith conduct.⁶

I will provide you now with more detail about these elements of Plaintiffs' claim.

⁶ *Bensel v. Allied Pilots Ass'n*, 675 F. Supp. 2d 493, 499 (D.N.J. 2009) (citing *Deboles v. Trans World Airlines*, 552 F.2d 1005, 1019 (3d Cir. 1977)). See also *Vaughn v. ALPA*, 604 F.3d 703, 709 (2d Cir. 2010) ("To prove that a union has breached its duty of fair representation, the challenging members must establish two elements. First, they must prove that the union's action or inactions 'are either "arbitrary, discriminatory, or in bad faith."' . . . Second, the challenging members must 'demonstrate a causal connection between the union's wrongful conduct and their injuries.'") (citations omitted).

[Defendant's Proposed Charge No. 14(b): Duty of Fair Representation]

ALPA is a labor organization and was the exclusive collective bargaining representative of the TWA pilots. When a union or labor organization is the exclusive representative of employees, the law requires that the union fairly represent the interests of those employees. This duty is known as the duty of fair representation.⁷

A union breaches its duty of fair representation only if in the course of negotiating, modifying, administering, or enforcing a collective bargaining agreement, the union's conduct toward a member of the bargaining unit it represents in the matter at issue was arbitrary, discriminatory, or in bad faith.⁸ A union owes its duty of fair representation to every employee within the bargaining unit that it represents.⁹

A cause of action for the breach of the duty of fair representation is a "purposefully limited check" on a union's discretion in its representation of its members.¹⁰ Therefore, any review of union actions in the context of litigation "must be highly deferential."¹¹ This deferential review is designed to recognize "the wide latitude that negotiators need for the effective performance of their bargaining responsibility."¹² Therefore, in evaluating whether Plaintiffs have demonstrated their claim of breach of the duty of fair representation, you may not rely on hindsight. Instead, you must evaluate ALPA's decisions and actions only in light of the legal and factual information ALPA possessed at the time it made those decisions and took those actions.

⁷ *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

⁸ *Id.*

⁹ O'Malley, 3A Fed. Jury Prac. & Instr. § 157.81 (5th ed.) (citing *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); see also *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 76-78 (1991).

¹⁰ *Steelworkers v. Rawson*, 495 U.S. 362, 375 (1990).

¹¹ *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 78 (1991).

¹² *Id.*

Plaintiffs do not assert that ALPA's actions were arbitrary or discriminatory, only that ALPA was motivated by bad faith.¹³ Accordingly, in order to prevail on their claim that ALPA breached its duty of fair representation, Plaintiffs must prove that ALPA's conduct was motivated by bad faith toward them.

¹³ *Bensel v. Allied Pilots Ass'n*, 675 F. Supp. 2d 493, 501 n.13 (D.N.J. 2009) ("The Plaintiffs do not allege ALPA was arbitrary or discriminatory.").

[Defendant's Proposed Charge No. 14(c): Bad Faith]

In order to prove “bad faith” on the part of ALPA, plaintiffs were required to prove that ALPA engaged in fraud, deceitful action, or dishonest conduct toward them in the matter at issue. Personal hostility alone is insufficient to establish unfair representation if the union’s representation was adequate and there is no substantial evidence that personal hostility tainted the union’s actions.¹⁴

To establish bad faith, plaintiffs have the burden of presenting affirmative “substantial evidence” of “fraud, deceitful action or dishonest conduct.”¹⁵ A showing of fraud, deceitful action or dishonest conduct requires proof of all of the following elements:

1. Proof of a false or misleading statement or material omission;
2. Reliance by union members on the misleading statement or material omission;
3. Injury caused by the wrongdoing; and
4. Wrongful intent on the part of the defendant against the Plaintiffs.¹⁶

¹⁴ *Id.*

¹⁵ *Amalgamated Ass’n of St. Elec. Ry. Employees v. Lockridge*, 403 U.S. 274, 299 (1971); *Humphrey v. Moore*, 375 U.S. 335, 348 (1964); *Moore v. Essex County Div. of Welfare*, Civ. No. 07-2504, 2009 WL 2581511, at *8 (D.N.J. Aug. 20, 2009).

¹⁶ *Deboles v. Trans World Airlines, Inc.*, 552 F.2d 1005, 1017-18 (3d Cir. 1977). *See also Ackley v. W. Conference of Teamsters*, 958 F.2d 1463, 1472 (9th Cir. 1992) (“[T]o prevail in a misrepresentation case . . . plaintiffs must demonstrate ‘a causal relationship between the alleged misrepresentations and their injury.’”); *Acri v. Int’l Ass’n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1397 (9th Cir. 1986) (holding that plaintiffs were required to prove that the outcome of a union vote would have been different but for the misrepresentations of its union); *Anderson v. United Paperworkers Int’l. Union AFL-CIO*, 641 F.2d 574, 580 (8th Cir. 1981) (finding plaintiffs failed to prove that their votes regarding a severance package would have been different but for the union’s alleged misrepresentations); *Petersen v. United Steel Workers of Am.*, No. Civ. 2004-0062, 2009 WL 3269311, at *10 (D.V.I. Oct. 8, 2009) (holding that plaintiffs were required to “individually establish that (1) the Union communicated inaccurate information in bad faith, (2) they relied on such information when they voted to strike or when they decided not to cross the picket line, (3) they would not have voted to strike or would have crossed the picket line if not for the misrepresentation, and (4) they sustained injuries from striking.”).

In order for you to find that ALPA acted in bad faith, you must find that ALPA had a “bad faith motive”¹⁷ in the manner in which it handled the integration of the TWA pilots into American Airlines. Moreover, in order for the bad faith motive to constitute a breach of the duty of fair representation, you must determine that the “bad” motive was the sole motivating factor for ALPA’s actions.¹⁸

I should emphasize to you that in order to prove their claim, Plaintiffs must prove “that ALPA did more than simply act negligently or without proper care in dealing with the TWA-American Airlines merger.”¹⁹ They must establish that ALPA was motivated by bad faith as I have defined it for you.

The Plaintiffs allege that ALPA was motivated by bad faith in connection with two sets of issues. First, Plaintiffs claim that ALPA, in bad faith, made material misrepresentations and failed to disclose material information in order to induce the TWA-MEC on April 2, 2001, to agree to a labor agreement that had been proposed by TWA and American and that did not give the TWA pilots the ability to arbitrate the issue of seniority integration provided, among other things, that the TWA pilots would waive the “scope” protections that were included in their labor agreement with TWA. Second, Plaintiffs claim that ALPA in bad faith failed to support the efforts of the TWA-MEC later in 2001, in connection with seniority integration negotiations with the APA – the union that represented the American Airlines pilots.

¹⁷ *Findley v. Jones Motor Freight*, 639 F.2d 953, 959 (3d Cir. 1981) (union must have “bad faith motive”).

¹⁸ *Addington v. US Airline Pilots Ass’n*, No. Civ. 08-1633, 2009 WL 2169164, at *14-15 (D. Az. July 17, 2009) *rev’d on other grounds*, 606 F.3d 1174 (9th Cir. 2010).

¹⁹ *Bensel v. Allied Pilots Ass’n*, 675 F. Supp. 2d 493, 501 (D.N.J. 2009)

With respect to the decision to accept the labor agreement offered on April 2, 2001, Plaintiffs allege the ALPA made the following false misrepresentations and that ALPA was motivated to do so by bad faith towards them:

1. That there was a high likelihood that TWA would win the Section 1113 motion, a motion filed in the bankruptcy court to reject the Collective Bargaining Agreement between TWA and its pilots, which would have resulted in the TWA pilots losing not only the seniority integration provisions but their grievance procedures and all other provisions of their CBA;

2. That there was a high likelihood that if the TWA MEC did not agree to concede the seniority provisions in their Collective Bargaining Agreement, known as the LPPs, American would walk away from the proposed asset purchase and that the pilots would again lose everything including their jobs; and

3. That if the TWA MEC did agree to the labor agreement on April 2, 2001, American Airlines would use its reasonable best efforts to assist the two unions (ALPA, representing TWA pilots, and APA, representing the American Airlines pilots) to arrive at a fair and equitable process for resolving the seniority and integration issues.²⁰

Plaintiffs also contend that ALPA failed to disclose a number of material facts to the TWA pilots, including the asserted fact that ALPA was engaged in an active organizing campaign to bring the American Airline pilots into ALPA with the knowledge and approval of APA.²¹

With respect to the negotiations over seniority integration and other events that took place after April of 2001, Plaintiffs claim that ALPA's bad faith caused it to engage in the following:

1. Failing to require American Airlines and TWA to negotiate the terms of seniority integration and the terms and conditions of the TWA Pilots' employment with ALPA while ALPA remained the certified exclusive collective bargaining agent for the Class;

2. Permitting American and TWA-LLC to require the TWA-MEC to negotiate seniority integration with APA;

3. Failing to seek representational rights of the combined pilots before the National Mediation Board;

²⁰ *Bensel v. Allied Pilots Ass'n*, 675 F. Supp. 2d 493, 498 (D.N.J. 2009).

²¹ *Id.*

4. Failing to challenge the certification of APA as the certified collective bargaining agent of the former TWA pilots as requested of them by the TWA-MEC; and

5. Failing to take action to challenge Supplement CC, though the agreement was entered into to control matters relating to rates of pay, rules and working conditions of the Class and was entered into with the ALPA as the Class' collective bargaining agent, in violation of the RLA.²²

(The following bracketed text is proposed for use in the event that the Court does not grant the Rule 50 motion providing the exclusion of evidence regarding Roland Wilder)

[Plaintiffs also contend that ALPA's asserted bad faith towards them during this period caused it to reject two litigation strategies suggested by Roland Wilder. In July, 2001, Wilder proposed a litigation strategy which he claimed was designed to shake "the complacency of the American pilots to create a dilemma for APA whereby it could either accept ALPA participation at the bargaining table which Captain Pastore [head of the TWA-MEC] had requested or assume a fair representation duty to the TWA pilots."

Later, in mid-September 2001, when the facilitated negotiations between the TWA pilots and the American pilots ended without an agreement, Wilder also proposed filing a lawsuit seeking to enjoin American Airlines and APA from entering into a seniority integration agreement without the agreement of the TWA pilots.

Plaintiffs claim that ALPA's refusal to authorize either of these lawsuits to be filed on its behalf was motivated by bad faith toward the Plaintiffs.]

In regard to each claim that ALPA was motivated by bad faith, the Plaintiffs must prove that ALPA engaged in conduct that was fraudulent, deceitful or dishonest and that ALPA acted with wrongful intent toward them. If you find that Plaintiffs have failed to establish that the advice or other conduct of ALPA was fraudulent, deceitful or dishonest and that ALPA acted with wrongful intent toward them, your verdict should be for ALPA. ALPA does not need to

²² *Id.* at 499.

establish that it had any particular reason for any of the actions it took, or that it was motivated by good faith, so long as Plaintiffs have not proven that ALPA was motivated by bad faith towards them, causing ALPA to engage in misconduct which caused them injury.

[Defendant's Proposed Charge No. 14(d): Overall Agreement]²³

In evaluating Plaintiffs' claim that ALPA's conduct was motivated by bad faith or that they suffered injury in the matter of their integration into American, you must consider not only the seniority integration but the overall contents of the agreement negotiated by ALPA through the TWA MEC, including all of the benefits of that agreement.

²³ Plaintiffs object to this Proposed Jury Instruction.

[Defendant's Proposed Charge No. 14(e): Causation/Proof of Injury]²⁴

If Plaintiffs prove that ALPA's conduct was motivated by bad faith as I have defined that term for you, they must then prove a tangible injury resulting from that bad faith conduct in order to prevail. Even if a labor union engages in deceptive conduct with an improper motive, it can only be held liable if its breach directly causes injury to an individual or group to whom the duty is owed.²⁵ "False statements may not create liability under the federal labor laws absent a showing of tangible injury proximately resulting from the falsehood."²⁶ Liability for a labor union's deceptive conduct in breach of the fiduciary duty of fair representation arises only if the breach directly causes injury to an individual or group to whom the duty is owed.²⁷ In the absence of such injury, any remedy against the union would necessarily be a "punishment" and not a redress for injury.²⁸

In this case, proving injury means that Plaintiffs are required to demonstrate that the advice provided to the TWA MEC and the outcome of the TWA-MEC vote on April 2, 2001, would have been different and that the overall outcome of the integration of the TWA pilots into American would have been more favorable and the Plaintiffs would have received a better package of employment benefits if ALPA had not been motivated by bad faith toward the Plaintiffs in the circumstances that I have described to you.²⁹ It is not enough for Plaintiffs to prove that the outcome of the negotiations and the other arrangements might have been

²⁴ Plaintiffs object to this Proposed Jury Instruction.

²⁵ *Bensel v. Allied Pilots Ass'n*, 675 F. Supp. 2d 493, 499 (D.N.J. 2009) (quoting *Deboles v. Trans World Airlines*, 552 F.2d 1005, 1019 (3d Cir. 1977)).

²⁶ *Deboles v. Trans World Airlines*, 552 F.2d 1005, 1017 (3d Cir. 1977).

²⁷ *Id.*

²⁸ *Id.* at 1019.

²⁹ *Id.* at 1019-20; *Acri v. Int'l Assoc. of Machinists & Aerospace Workers*, 781 F.2d 1393, 1397 (9th Cir. 1986).

different.³⁰ They must prove that the only thing that prevented a better outcome on their integration into American was ALPA's allegedly bad faith conduct in breach of the duty of fair representation.³¹

If you conclude, for example, that the Plaintiffs have failed to prove that the advice to the TWA MEC and the outcome of the vote on April 2, 2001, would have been different, or if the vote had been different, if they have failed to prove that American Airlines would not have walked away from the transaction, your verdict on the issue of causation on the first set of claims should be for ALPA. Likewise, if you conclude, after the vote on April 2, 2001, that Plaintiffs failed to prove that additional efforts by ALPA would have had a positive effect on the outcome of their integration into American, your verdict on the issue of causation with respect to the second set of claims should be for ALPA.

³⁰ *Anderson v. United Paperworkers Int'l Union*, 641 F.2d 574, 579 (8th Cir. 1981); *Barrett v. Thorofare Markets, Inc.*, 452 F. Supp. 880, 884 (W.D. Pa. 1978).

³¹ *DeLong v. Int'l. Union*, 850 F. Supp. 614, 619 (S.D. Ohio 1993), *aff'd sub nom. NLRB v. United States Postal Serv.*, 17 F.3d 1434 (4th Cir. 1994).

Defendant's Proposed Charge No. 15: Fraud Not Presumed³²

Fraud is never presumed, but must always be proved by a preponderance of the evidence. You should assume that persons are fair in their dealings until the contrary appears from the evidence. If a transaction is called into question and is equally capable of two interpretations, one honest and the other fraudulent, it should be found to be honest.³³

³² Plaintiffs object to this Proposed Jury Instruction.

³³ O'Malley 3A Fed. Jury Prac. & Instr. §123.10 (5th ed.)

Defendant's Proposed Charge No. 16: No Burden of Proof on ALPA³⁴

It is the Plaintiffs' burden to prove bad faith. ALPA is not obligated to produce evidence that it acted in good faith.³⁵

³⁴ Plaintiffs object to this Proposed Jury Instruction.

³⁵ *Simo v. Union of Needletraders, Indus. & Textile Employees*, 322 F.3d 602, 618 (9th Cir. 2003).

Defendant's Proposed Charge No. 17: Assertion of Legal Claims and Litigation³⁶
(Alternative charges proposed by Defendant)

As I have told you, Plaintiffs contend that ALPA breached its duty of fair representation when it rejected certain recommendations by Roland Wilder that litigation be filed. You heard testimony about the litigation strategies suggested by Roland Wilder. Those strategies included: (1) a plan to file a lawsuit in federal district court to compel TWA to arbitrate the grievance regarding seniority and, in the meantime, to enjoin TWA from closing its transaction with American; (2) a plan to place American in the "Horns of a Dilemma" by attempting to compel ALPA's participation in negotiations regarding the TWA pilots by filing a lawsuit to enjoin American and APA from implementing any agreement that would affect the TWA pilots. The second part of this plan was to file a lawsuit claiming a violation of the duty of fair representation against the American pilots union, the APA; and (3) a plan to file a lawsuit to enjoin the implementation of Supplement CC. This third legal strategy required coordination of a number of legal maneuvers that I do not need to detail here.

I have determined as a matter of law that these litigation theories were deficient and would not have been appropriate to pursue. Accordingly, I am instructing you as a matter of law that ALPA acted reasonably and appropriately in not approving the litigation tactics proposed by Roland Wilder.

³⁶ Plaintiffs object to this Proposed Jury Instruction.

Defendant's Alternative Proposed Charge No. 17³⁷

(proposed for use in the event that the Court does not grant the Rule 50 motion providing the above result)

As I have told you, Plaintiffs contended that ALPA breached its duty of fair representation when it rejected certain recommendations by Roland Wilder that litigation be filed. There are some basic elements of the rules and rules and regulations governing lawyers. A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.³⁸

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.³⁹

³⁷ Plaintiffs object to this Proposed Jury Instruction.

³⁸ ABA Model Rule of Prof'l Conduct, Preamble (2002).

³⁹ *Id.*

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law.⁴⁰ One such Rule, RPC 3.1, governs a lawyer's use of legal process.

The Rule states:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.⁴¹

In addition to the Rules of Professional Conduct, lawyers are also governed by the requirements set forth in the relevant Rules of Court. One such Rule is Federal Rule of Civil Procedure 11(b). That Rule states:

By presenting to the court a pleading, written motion or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after the inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on belief of a lack of information.⁴²

The law also prohibits lawyers and litigants from making litigation and proceedings longer and more complicated than necessary. The law states:

⁴⁰ *Id.*

⁴¹ ABA Model Rule of Prof'l Conduct R. 3.1 (2002).

⁴² Fed. R. Civ. P. 11(b).

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred by such conduct.⁴³

Thus, if a lawyer proposes a course of action or litigation or proceeding that would violate any one of these provisions, that proposed course of action, litigation or proceeding would not be valid and would be a reasonable basis for rejecting any such recommended course.

If you find that Roland Wilder's proposals would have violated these Rules, then you must find in favor of ALPA on this issue.

⁴³ 28 U.S.C. §1927.

Defendant's Proposed Charge No. 18: Damages -- Effect of Instructions⁴⁴

You may be familiar, either through your own experience or through some other means, that in the event a jury finds that a plaintiff has satisfied all elements of their claim, the jury will next deliberate on the question of damages, meaning dollars lost as a result of liability. You will not consider the question of damages in any way during your deliberations. You should not speculate about what damages might exist or what they might be because damages are not at issue in this action. This does not mean, however, that you will not consider the question of injury; as instructed, Plaintiffs must prove, as an element of their claims against ALPA, that ALPA's alleged bad faith motivation resulted in actual injury as described above.

⁴⁴ Plaintiffs object to this Proposed Jury Instruction.

Plaintiffs' Proposed Charge No. 19: Read-Backs of Trial Testimony

At your request, I have decided to have [a transcript of] [describe the testimony] read [provided] to you in order to assist you in your deliberations. I remind you that you must focus on all of the testimony and evidence presented at the trial. You may not give undue weight to the testimony that is read back to you [provided to you].

Third Circuit Model Jury Charges, 3.3

Proposed Charge No. 20: Deliberations

When you retire to the jury room to deliberate, you may take with you these instructions, your notes, and the exhibits that the Court has admitted into evidence. You should select one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in open court.

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if, under the appropriate burden of proof, the TWA Pilots have established their claims. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

As jurors, you have a duty to consult with each other and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after a full and impartial consideration of all of the evidence with your fellow jurors. Listen to each other carefully. In the course of your deliberations, you should feel free to re-examine your own views and to change your opinion based upon the evidence. But you should not give up your honest

convictions about the evidence just because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

When you start deliberating, do not talk to the jury officer, to me or to anyone but each other about the case. During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a cell phone, smart phone [like Blackberries or iPhones], or computers of any kind; the internet, any internet service, or any text or instant messaging service [like Twitter]; or any internet chat room, blog, website, or social networking service [such as Facebook, MySpace, LinkedIn, or YouTube], to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

If you have any questions or messages for me, you must write them down on a piece of paper, have the foreperson sign them, and give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take some time to get back to you.

One more thing about messages. Never write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that a certain number is voting one way or another. Your votes should stay secret until you are finished.

Your verdict must represent the considered judgment of each juror. In order for you as a jury to return a verdict, each juror must agree to the verdict. Your verdict must be unanimous.

A form of verdict has been prepared for you. It has a series of questions for you to answer. You will take this form to the jury room and when you have reached unanimous agreement as to your verdict, you will fill it in, and have your foreperson date and sign the form. You will then return to the courtroom and your foreperson will give your verdict. Unless I direct

you otherwise, do not reveal your answers until you are discharged. After you have reached a verdict, you are not required to talk with anyone about the case unless I order you to do so.

Once again, I want to remind you that nothing about my instructions and nothing about the form of verdict is intended to suggest or convey in any way or manner what I think your verdict should be. It is your sole and exclusive duty and responsibility to determine the verdict.⁴⁵

⁴⁵ Third Circuit Model Jury Charges, 3.1.

Proposed Charge No. 21: Duty To Deliberate

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous.

But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or merely for the purpose of returning a verdict. You are not partisans. You are judges -- impartial judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case. Under no circumstances should your deliberations be affected or diverted by any appeal to bias, passion or prejudice for or against any of the parties, nor influenced by any pity or sympathy in favor of them. The law does not permit jurors to be governed by sympathy, prejudice or public opinion. A corporation, or other association, including a labor union, and all other persons are equal before the law and must be treated as equals in a court of justice.⁴⁶

⁴⁶ Plaintiffs object to the modification of this sentence in the charge.

Proposed Charge No. 22: Conclusion

(a) If any of you have served on a jury before, you must disregard the facts and law of that case and any verdict you may have returned, because they have no application to this case. All cases are unique and must be judged independently. You are not permitted to compare them to arrive at your verdict in this case. Your verdict here must be based solely on the law I give to you and the evidence you heard and saw in this courtroom.

(b) You are instructed once more that if I have asked any questions of any witness during the trial or if I have said or done anything during the trial, or in the course of instructing you now, that suggests to you that I am inclined to favor the case of the plaintiff or the defendant, you must remove that impression from your minds and not permit yourselves to be influenced it. Nothing in these instructions or in the verdict sheet prepared for your convenience is meant to suggest what verdict I think you should find. That is not my responsibility.

The determination of the verdict is the exclusive and essential duty of the jury.

(c) You will be provided with a written copy of these instructions should you desire to consult it during deliberations. The captions at the beginning of the various sections or subsections are not part of the instructions and are there only for your convenience. You must not consider any particular portion of these instructions in isolation, but rather, you must apply all the rules of law about which I have instructed you.

(d) May I commend counsel for their actions in this Court and for the respect which they have given to the Court. I wish also to compliment and thank the jurors for their patience and for the attention they have paid to the witnesses, to the parties and to this Court.

(e) If you have any questions for the Court, please write them on a piece of paper and have your foreperson give them to the United States Marshal for delivery to me. Never attempt

to communicate with the Court by any other means than a signed writing. You will be provided with paper and pencils. Bear in mind that you are not to reveal to the Court or to any person how the jury stands, numerically or otherwise, until you have reached a unanimous verdict.

(f) Now a word as to the form of your verdict. Your verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each and every juror agree to it. Your verdict must be unanimous. In accordance with our custom in this Court, Juror Number One, (*COURT WILL ADD NAME*), will act as your foreperson and (*COURT WILL ADD NAME*) must sign the verdict when it is reached.

(g) Jurors perform a very important function in deciding upon their verdict. You are an arm of government, here to do justice. There is nothing more sacred. Do your duty conscientiously, according to your oath, and according to these instructions, and justice will be done.

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